TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 196[illegible]

No. [illegible]52

UNITED STATES, PETITIONER,

vs.

UNION CENTRAL LIFE INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

PETITION FOR CERTIORARI FILED FEBRUARY 13, 1961
CERTIORARI GRANTED MARCH 27, 1961

Supreme Court of the United States

OCTOBER TERM, 1960

No. 722

UNITED STATES, PETITIONER,

vs.

UNION CENTRAL LIFE INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

INDEX

[fol. A] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF MICHIGAN

Appeal from the Circuit Court for the County of Oakland, In Chancery

Honorable William John Beer, Circuit Judge

Circuit Court No. C-29640

Supreme Court No. 48,252

THE UNION CENTRAL LIFE INSURANCE COMPANY, a Corporation organized and existing under and by virtue of the laws of the State of Ohio,
PLAINTIFF AND APPELLEE

v.

UNITED STATES OF AMERICA, DEFENDANT AND APPELLANT

APPENDIX TO THE BRIEF FOR THE UNITED STATES, APPELLANT—Filed January 19, 1960

• • • •

[fol. 1] IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND, IN CHANCERY STATE OF MICHIGAN

No. C-29640

THE UNION CENTRAL LIFE INSURANCE COMPANY, a Corporation organized and existing under and by virtue of the laws of the State of Ohio, PLAINTIFF

v.

ROBERT G. PETERS, JR. and HELEN R. PETERS, his wife, and UNITED STATES OF AMERICA, DEFENDANTS

DOCKET ENTRIES

1957

Nov. 27. Bill of complaint filed; cause entered.
Nov. 27. Summons issued ret. Ret. Jan. 26, '58.
Dec. 18. Proof of service on summons filed, Dec. 5, '57.
Dec. 18. Proof of service and return filed.
Dec. 18. Proof of services by registered mail filed.

1958

Jan. 29. Answer of defendant United States of America filed.
Apr. 17. Affidavit of non-appearance filed.
Apr. 17. Affidavit of regularity filed.
Apr. 17. Order pro-confesso filed.
[fol. 2]
June 23. Praecipe for causes ready for trial 22545 C2.
July 16. Stip. filed.

1959.

Jan. 26. Stipulation filed.
Feb. 10. Case submitted on briefs.
Mar. 4. Taken under advisement.
Mar. 31. Oral arguments heard; taken under advisement.
Apr. 1. Plaintiff's Reply Brief filed.

1959

Apr. 1. Brief on behalf of plaintiff; statement of facts filed.
Apr. 1. Supplemental Stipulation filed.
Apr. 1. Brief for the U.S.A. filed.
Apr. 16. Decree filed.
Apr. 22. Notice of entry of decree and proof of service thereof filed.
May 6. Files enrolled.
May 12. Claim of appeal, notice of taking appeal, and affidavit of service of claim of appeal and notice filed.
May 12. Certificate of Court Reporter as to ordering of transcript filed.
June 25. Motion for stay of proceedings, notice of hearing and proof of service filed.
June 29. Tax costs plaintiff $49.50.
June 29. Order for dismissal of stay of proceeding sale of mortgaged premises and deposit of the proceeds therefrom filed.
June 29. Stip. for dismissal of stay of proceedings—sale of mortgaged premises and disposal of the proceeds therefrom filed.

[fol. 3]

June 29. Stip. and order for dismissal of stay of proceedings, etc., granted.
July 15. Order confirming report of sale filed.
July 15. Commissioner's report of sale filed.
July 23. Tax costs plaintiff filed.
July 23. Proof of service of notice of entry of order confirming, sale filed.
Sept. 18. Transcript of Court testimony filed.

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND, IN CHANCERY

DECREE—Filed April 16, 1959

February 10, 1959

Beer, J.

This cause came on to be heard upon the bill of complaint filed herein and upon the answer of the United States of America filed herein, the said bill having been duly and regularly taken as confessed by the defendants, Robert G. Peters, Jr. and Helen R. Peters, his wife, for want of appearance after proper and regular service of a summons issued herein; and it appearing to the Court that all of the material allegation in plaintiff's bill of complaint are true and that the mortgage therein mentioned, bearing date the 10th day of November, 1954, constitutes a valid and subsisting lien upon the premises hereinafter described in favor of the plaintiff, prior and paramount to the rights of the defendants and each of them and superior to all tax liens filed or claimed by the defendant, United States of America, and it further appearing that there is due and owing to the plaintiff upon said mortgage and the promissory note secured thereby as of the 10th day of February, A. D. 1959, that being [fol. 4] the date of the hearing before this Court of this cause, the following sums, to-wit:

For Principal	$15,634.16
For Interest	1,365.49
For fire insurance premiums paid by plaintiff	129.44
For Taxes advanced	1,475.71

making a total of eighteen thousand six hundred and four and 80/100 dollars ($18,604.80) now due and unpaid on said mortgage, and it further appearing that plaintiff is the owner and holder of said promissory note and mortgage bearing date the 10th day of November, 1954, and as such owner is entitled to enforce and foreclose the same;

It is ordered, adjudged and decreed, and this Court, by virtue of the authority therein vested, doth order, adjudge and decree that the defendants Robert G. Peters, Jr. and Helen R. Peters, his wife, shall pay to plaintiff or its attorneys the said sum of money so found as aforesaid to be due, including interest and costs, on or before ten (10) days from the date hereof, and that, in default thereof, the interest of said defendants, and each of them, in and to said premises hereinafter described, or so much thereof as may be sufficient to raise the amount due on said promissory note and mortgage, be sold at public auction by and under the direction of the Circuit Court Commissioner in and for said County of Oakland at any time after the expiration of the period herein limited for payment of the sums owing herein.

It is further ordered, adjudged and decreed that such sale be made within the County of Oakland and that the [fol. 5] said Circuit Court Commissioner conducting the same give notice of the time and place thereof in accordance with the rules and practice of this Court and the statute in such cases made and provided, and that any of the parties to this cause may become the purchaser or purchasers at such sale, and that the Circuit Court Commissioner execute the usual deed on foreclosure of a mortgage in Chancery to the purchaser or purchasers of the said mortgaged premises, on such sale; and that such sale and deed shall transfer and convey to the purchaser or purchasers all rights, title and interest of any and all of the parties to this cause in and to said mortgaged premises; and that the Commissioner, out of the proceeds of said sale, pay to plaintiff, or its attorneys, the total amount hereinbefore found to be due on said mortgage, with costs and interest, or so much thereof as the purchase money of said premises will pay for the same, and that the said Commissioner will take a receipt for the amount so paid, and file the same with his report; and that he bring the surplus monies arising from said sale, if any there be, into this Court without delay to abide the further order of this Court.

It is further ordered, adjudged and decreed that plaintiff may pay any taxes levied and assessed against said

premises falling due hereafter and prior to the expiration of the period of redemption, and such portion of the premium or premiums of insurance covering any buildings located thereon as shall be required to keep the policy or policies in force until the expiration of the period of redemption, and any and all amounts so paid shall be added to the amount herein found to be due to plaintiff; provided that an affidavit or affidavits of such payment or payments be filed in the office of the Register of Deeds for said County of Oakland in accordance with [fol. 6] the statute in such case made and provided. Redemption from said sale in such case shall not be made except on payment of such additional sums.

It is further ordered, adjudged and decreed that six (6) months from and after the date of said sale, the said defendants, Robert G. Peters, Jr. and Helen R. Peters, his wife, and all persons claiming by, through or under them, and that one (1) year from and after the date of said sale, the defendant United States of America and all persons now or who may hereafter claim by, through or under the said United States of America, be forever barred and foreclosed from all rights or equity of redemption and claim in and to said mortgaged premises and every part or parcel thereof which shall not prior to that time have been redeemed from said sale.

It is further ordered, adjudged and decreed that six (6) months after the date of said sale, the purchaser or purchasers of said mortgaged premises at said sale be let into possession thereof, and that any of the parties to said cause who may be in possession thereof, or any person who since the commencement of this suit has come into possession thereof, deliver possession of said premises, or such portions thereof as may not have been redeemed, to such purchaser or purchasers upon the production of the Commissioner's Deed for such premises and a certified copy of the order confirming the report of such sale, subject however to the right of the United States of America to redeem from said sale within one (1) year from the date of said sale.

It is further ordered, adjudged and decreed that if the monies arising from said sale shall be insufficient to pay the sums hereinbefore found to be due to plaintiff, to-

gether with such additional sums as may be added there-[fol. 7] to in accordance with the provisions above set forth, and interest, costs and expenses as aforesaid, that said Commissioner shall specify the amount of such deficiency in his report of sale, and that on the coming in and confirmation of said report the said defendants, Robert G. Peters, Jr. and Helen R. Peters, who are hereby declared to be personally liable for the debt secured by said mortgage, pay to plaintiff the amount of such deficiency, with interest thereon from the date of such report and that said plaintiff have execution therefor.

The description and particular boundaries of the property authorized to be sold under and by virtue of this decree, as far as the same may be ascertained from said mortgage on file herein, and as described in said bill of complaint, are as follows:

> Land situated in the City of Birmingham, County of Oakland and State of Michigan, described as follows, to-wit:
>
> "Lot 331, The Meyering Land Company's Birmingham Highlands Subdivision #2, a Subdivision of part of Northwest ¼ Section 35, Town 2 North, Range 10 East, Village of Birmingham, Oakland County, Michigan, according to the plat thereof as recorded in Liber 49, on page 5 of Plats, Oakland County Records."

/s/ William John Beer,
Circuit Judge.

[fol. 8] IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND, IN CHANCERY

STIPULATION—Filed January 26, 1959

The respective attorneys for the plaintiff and the defendant, United States of America, having agreed upon the existence of certain facts pertaining to the allegations contained in plaintiff's bill of complaint and the answer of the defendant United States of America, and the matters in controversy in said cause,

It is hereby stipulated and agreed by and between plaintiff and said defendant, United States of America and their respective attorneys, as follows:

1. That there is in plaintiff's possession a certain promissory note dated November 10, 1954, wherein and whereby the defendants Robert G. Peters, Jr. and Helen R. Peters, his wife, agreed to pay to plaintiff, or order, the sum of $17,000.00, with interest from date on any part thereof at any time unpaid, at the rate of 5% per annum, in monthly installments of principal and interest of $112.20, and it was provided in said instrument that installments not paid when due should bear interest at the rate of 7% per annum after maturity and until paid; and that said instrument was signed by Robert G. Peters, Jr. and Helen R. Peters, his wife.

2. That there appears of record in the office of the Register of Deeds for said County of Oakland and State of Michigan, a certain mortgage from said defendants Robert G. Peters, Jr. and Helen R. Peters, his wife, to plaintiff, which is dated November 10, 1954 and recorded on the 24th day of November, A. D. 1954 in Liber 3240, page 186, Oakland County Records, which encumbers the following described premises:

[fol. 9] Land in the County of Oakland, State of Michigan, to-wit:

> Lot 331, The Meyering Land Company's Birmingham Highlands Subdivision #2, a Subdivision of part of the Northwest ¼ Section 35, Town 2, North, Range 10 East, Village of Birmingham, Oakland

County, Michigan, according to the plat thereof as recorded in Liber 49, on page 5 of Plats, Oakland County Records;

and that it was stated in said mortgage that the same was given to secure payment of the sum of $17,000.00 with interest according to the terms of said promissory note and that the installments on said mortgage were payable as stipulated in said note.

3. That said mortgage contains a provision to the effect that the mortgagee may declare the entire unpaid balance owing on said mortgage due and payable forthwith in the event of a default on the part of the mortgagor in any of the provisions thereof; that certain payments have been made by the said Robert G. Peters, Jr. and Helen R. Peters, his wife, on said note and mortgage but plaintiff claims that there has been a default in payments as specified in the bill of complaint.

4. That on the date of the recording of said mortgage, Robert G. Peters, Jr. and Helen R. Peters, his wife, were the owners of record of the premises above described, as appears from the records in the office of the Register of Deeds for said County of Oakland.

5. That notices of Federal tax liens were filed against Robert G. Peters and Helen R. Peters and that the taxable period of said liens, the number, the principal balance, assessment date, and date of recording the notice of the liens are as follows:

[fol. 10]

Tax Period	Tax Lien Number	Principal Balance	Assessment Date	Recording Date of Lien
1952 Income	73505	$1,368.07	1-11-54	DC 7-2-54
1953 Income	E-15	9,686.48	7-9-54	DC 8-2-55
1955 Income	P-1697	357.41	4-30-57	OC 7-12-57

Notices of tax liens Nos. 73505 and E-15 were filed with the Clerk of the United States District Court for the Eastern District of Michigan, Southern Division, and notice of tax lien No. P-1697 was recorded in the Office of the Register of Deeds for Oakland County, Michigan.

6. That none of said notices of Federal tax liens above mentioned contains a description of the premises encumbered by said mortgage.

7. That Frank G. Millard, Attorney General for the State of Michigan, issued an Attorney General's Opinion, dated September 10, 1953 and numbered 1709, in which it was stated that Treasury Department Form of Notice of Lien, No. 668, which was the Form used for Tax Lien No. 73505 above mentioned, was not entitled to recordation in the office of the Register of Deeds of any county in the State of Michigan for the reason that said Form did not provide for or allow for a description of any land, and did not comply with the provisions of Act 104 of the Public Acts of 1923 (Mich. Stat. Ann. 7.751); and that between the date of said opinion and August 11, 1956, the effective date of the Michigan Uniform Federal Tax Lien Registration Act, being Act 107 of the Public Acts of 1956, it was the policy of the office of the Register of Deeds for said County of Oakland not to accept for re- [fol. 11] cording notices of Federal tax liens which did not contain a legal description of any land.

/s/ Clark, Klein, Brucker and Waples,
Attorneys for Plaintiff.

Dated: January 23, 1959.

Fred W. Kaess,
United States Attorney,

By /s/ Elmer L. Pfeifle, Jr.,
Assistant United States Attorney,
Attorneys for Defendant United States of America.

Dated: January 22, 1959.

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND, IN CHANCERY

SUPPLEMENTAL STIPULATION—Filed April 1, 1959

The respective attorneys for the plaintiff and defendant United States of America hereby stipulate and agree to the following supplemental items in addition to the stipulation heretofore entered into between the parties on or about January 23, 1959:

1. That the assessment list was received by the District Director of Internal Revenue at Detroit, Michigan on January 11, 1954, and that notice and demand for payment were sent to the taxpayers on January 13, 1954, in relation to the assessment for 1952 income.

2. That the assessment list was received by the District Director of Internal Revenue at Detroit, Michigan, on July 9, 1954, and that notice and demand for payment [fol. 12] were sent to the taxpayers on July 16, 1954, in relation to the assessment for 1953 income.

3. That on April 30, 1957, the District Director's office at Detroit, Michigan made the assessment for the 1955 income tax and that notice and demand were sent to the taxpayers on May 9, 1957.

4. That the mortgage from said defendants, Robert G. Peters, Jr. and Helen R. Peters, his wife, to plaintiff, Union Central Life Insurance Company, which is dated November 10, 1954, and which has been recorded on the 24th day of November, 1954, in Liber 3240 at page 186, in the office of the Register of Deeds for the County of Oakland, has been duly and properly recorded, and, apart from the legal questions raised in this action relating to priority of liens between the United States of America and the plaintiff herein, is a valid and subsisting first lien upon said premises.

/s/ Clark, Klein, Brucker & Waples,
By: H. William Butler,

/s/ Fred W. Kaess,
United States Attorney,

By: Elmer L. Pfeifle, Jr.,
Assistant United States Attorney.

Dated: March 30, 1959.

[fol. 13] . [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF MICHIGAN

Appeal from the Circuit Court for the County of Oakland, In Chancery

Honorable William John Beer, Circuit Judge

Circuit Court No. C-29640

Supreme Court No. 48,252

THE UNION CENTRAL LIFE INSURANCE COMPANY, a Corporation organized and existing under and by virtue of the laws of the State of Ohio,
PLAINTIFF AND APPELLEE

v.

UNITED STATES OF AMERICA, DEFENDANT AND APPELLANT

APPENDIX TO THE BRIEF FOR THE UNION CENTRAL LIFE INSURANCE COMPANY, APPELLEE—Filed April 1, 1960

• • • •

[fol. 14] IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND, IN CHANCERY

BILL OF COMPLAINT—Filed November 27, 1957

Now comes The Union Central Life Insurance Company, plaintiff in the above entitled cause, and respectfully shows unto the Court as follows:

(1) That it is a corporation organized and existing under the laws of the State of Ohio and is duly authorized to do business within the State of Michigan.

(2) That on or about the 10th day of November, A. D. 1954 said defendants Robert G. Peters, Jr. and Helen

R. Peters, his wife, borrowed of plaintiff the sum of $17,000.00, and as evidence of said indebtedness made, executed and delivered unto plaintiff their certain promissory note in writing bearing date the said 10th day of November, A. D. 1954, wherein and whereby the said defendants Robert G. Peters, Jr. and Helen R. Peters, his wife, agreed to pay to plaintiff, or order, said sum of $17,000.00 with interest from date on any part thereof at any time unpaid at the rate of five percentum (5%) per annum, in monthly installments of principal and interest as follows: $112.20 on the 1st day of January, 1955 and a like amount on the first day of each month thereafter to and including the first day of November, 1974, with the balance of principal and interest on the first day of December, 1974; and that it was further provided in said promissory note that installments not paid when [fol. 15] due shall bear interest at the rate of seven percentum (7%) per annum after maturity and until paid, all of which will more fully and at large appear upon reference to a true copy of said note which is hereto annexed and marked "Exhibit A".

(3) That in order to secure payment of the sum mentioned in said promissory note, said defendants Robert G. Peters, Jr. and Helen R. Peters, his wife, made, executed and delivered to plaintiff a certain mortgage on land situated in the City of Birmingham, County of Oakland and State of Michigan, and described as follows, to-wit:

> "Lot 331, The Meyering Land Company's Birmingham Highlands Subdivision #2, a Subdivision of part of Northwest ¼ Section 35, Town 2 North, Range 10 East, Village of Birmingham, Oakland County, Michigan according to the plat thereof as recorded in Liber 49, on Page 5 of Plats, Oakland County Records;"

that said mortgage bears date the 10th day of November, A. D. 1954, was duly executed and acknowledged, and recorded in Liber 3240, Page 186, Oakland County Records, on the 24th day of November, A. D. 1954; and that said mortgage constitutes a valid and subsisting lien on said premises prior and paramount to the interests of all defendants herein named and all other persons.

(4) That in and by the terms of said mortgage said defendants Robert G. Peters, Jr. and Helen R. Peters, his wife, agreed to pay said note according to its tenor and effect.

(5) That it was further provided in paragraph "2" of said mortgage that the mortgagors covenant and agree with the mortgage, its successors and assigns, to pay [fol. 16] pay when due all taxes, assessments and changes of every character which then were or which thereafter might become liens on the real estate described in said mortgage, and that if not so paid the mortgagee might pay such taxes, liens, charges or assessments and that said mortgage should stand as security for the amount so paid, with interest.

(6) That in and by the term of paragraph "3" of said mortgage the said mortgagors covenanted and agreed to keep the buildings then or thereafter erected on said mortgaged premises insured to the satisfaction of the mortgagee and to deliver the policies and renewals thereof to the mortgagee with loss clause satisfactory to the mortgagee attached; and that in case of failure to keep said buildings so insured the mortgagee might effect such insurance:

(7) That it was further provided in paragraph "6" of said mortgage that in case the taxes, assessments, liens, charges, attorney's fees, costs, expenses and insurance premiums are paid by the mortgage as provided in said mortgage, the amount so paid may be collected from the mortgagors on demand, together with interest at seven percentum (7%) per annum from the time of payment, and that said mortgage should stand as security therefor.

(8) That said defendants, Robert G. Peters, Jr. and Helen R. Peters, his wife, have made default in the terms of said promissory note and mortgage in that they have failed and neglected to pay that installment of principal and interest which became due and payable thereunder on the 1st day of August, A. D. 1957 and have failed and neglected to pay all subsequent installments which have [fol. 17] become due and payable under the terms of said promissory note and mortgage, and that no payments have since been received thereon by plaintiff from or on behalf of said defendants or any other person.

(9) That said defendants, Robert G. Peters, Jr. and Helen R. Peters, his wife, have also made default in the terms of said mortgage in that they have failed and neglected to pay the County tax for the year 1956 in the amount of $494.18 and have also failed and neglected to pay the City of Birmingham tax in the sum of $152.71, in accordance with the provisions of said mortgage, and that plaintiff, in order to protect its interest in said premises, has paid the same in the amounts of $494.18 and $152.71, respectively, making a total of $646.89 paid by plaintiff as aforesaid.

(10) That plaintiff has frequently demanded payment of such sums as are past due on said promissory note and mortgage but that notwithstanding such demands said defendants Robert G. Peters, Jr. and Helen R. Peters have neglected and still neglect to pay the same.

(11) That it is further provided in said mortgage as follows:

> "If the Mortgagors fail to pay said note or any note given in renewal or extension thereof, or as evidence of interest, when due, or if the Mortgagors fail to comply with any provision hereof, the whole debt shall thereupon be due and payable at the option of the Mortgagee without notice, and this mortgage foreclosed by judicial proceedings • • •";

and that plaintiff has elected and by the filing of this bill of complaint does elect to declare the entire balance on said note due and payable forthwith.

[fol. 18] (12) That there is now due and owing under the terms of said promissory note and mortgage for principal the sum of $15,634.16, for interest the sum of $304.11, and for taxes paid by plaintiff the sum of $646.89, making a total sum of $16,585.16 due and owing as of the date hereof.

(13) That subsequent to the date on which said mortgage was recorded in the office of the Register of Deeds for said County of Oakland notice of Federal tax liens were filed in the office of the District Clerk for the Eastern District of Michigan, Southern Division, against the said defendants Robert G. Peters, Jr. and Helen R. Peters, his wife, as follows:

Income Tax lien No. 73505 in the amount of $2,091.80, dated June 24, 1954, and filed on July 2, 1955;

Income Tax lien No. E-15, in the amount of $9,686.48, dated August 1, 1955, filed August 2, 1955;

Income Tax lien No. P-1697, in the amount of $357.41, dated July 11, 1957 and filed July 12, 1957, and also filed in the Office of the Register of Deeds for said County of Oakland in Volume 4, Tax Liens, Letter P. File No. 300;

that said liens of defendant, United States of America, and each of them, if valid, are subsequent, subordinate and inferior to the lien of said mortgage and to the rights of plaintiff thereunder.

(14) That no suit or proceeding at law has been had or taken for the recovery of the debt secured by said promissory note and mortgage or any part thereof.

[fol. 19] (15) That the value of plaintiff's interest in or lien on said premises very greatly exceeds the sum of $100.00.

For as much then as plaintiff is without an adequate remedy except in a court of equity, it therefore prays the aid of this Court:

(a) That said defendants, and each and all of them, may full, true, direct and perfect answer make to all and singular the premises.

(b) That said mortgage of plaintiff be decreed to be a valid and subsisting lien upon said premises prior and paramount to the rights of the said defendants, and each and all of them, and of all persons claiming or who may hereafter claim by, through or under them.

(c) That said defendants, or such of them as may be found liable therefor, be decreed to pay the plaintiff forthwith the amount which shall be found to be due to it under the terms of said promissory note and mortgage, with interest thereon.

(d) That in default thereof, all of said defendants hereto, and all persons claiming or who may hereafter claim by, through or under them, may be forever barred and foreclosed of and from all right and equity of redemption in and to said premises and every part thereof.

(e) That in default of such payment, such mortgaged premises, with the appurtenances, may be sold at public auction or vendue by the order and decree and under the direction of this Court, and the monies arising from such sale, so far as may be necessary, or so far as the same shall extend, be applied after the payment of the expenses of such sale and costs of this suit, toward satisfying the full amount of the monies found as aforesaid to be due to plaintiff and secured by said promissory [fol. 20] note and mortgage; and that the surplus, if any there be, be paid to the defendants in such manner and amounts as the Court may determine.

(f) That said defendants and all persons claiming or who may hereafter claim by, through or under them, or who may have come into possession of said mortgaged land or premises since the commencement of this suit, may yield and deliver up possession thereof to the purchaser at such sale on production of the deed or deeds executed by the Circuit Court Commissioner or some other person making the same pursuant to said sale as aforesaid and a certified copy of this order of this Court confirming the report of such sale after such sale shall have become absolute unless said premises shall have in the meantime been redeemed according to law.

(g) That said defendants or such of them as may be found liable for the indebtedness due on said promissory note and mortgage, pay to plaintiff any balance thereof that shall remain due to plaintiff in the event that the sale of said mortgaged premises shall fail to produce a sufficient sum to pay the whole of said mortgage debt and the costs of this suit.

(h) And for such other, further and different relief as may be agreeable to equity and good conscience.

The Union Central Life Insurance Company,

By: /s/ E. R. Best,
Its Second Vice President,

And /s/ Marshall C. Hunt,
Its Assistant Secretary.

Dated: November 18, 1957.

[fol. 21] IN THE CIRCUIT COURT FOR
THE COUNTY OF OAKLAND, IN CHANCERY

EXHIBIT B

MORTGAGE

On this 10th day of November, 1954, Robert G. Peters, Jr., married and Helen R. Peters of Oakland County, Michigan, hereinafter called the Mortgagors, mortgage and warrant to The Union Central Life Insurance Company, an Ohio Corporation, hereinafter called the Mortgagee, whose residence and post-office address is Cincinnati, Ohio, the following described real estate in Oakland County, Michigan, to-wit:

> Lot 331, The Meyering Land Company's Birmingham Highlands Subdivision #2, a Subdivision of part of Northwest ¼ Section 35, Town 2 North, Range 10 East, Village of Birmingham, Oakland county, Michigan, according to the plat thereof as recorded in Liber 49, on Page 5 of Plats, Oakland County Records;

together with rents and profits and all fixtures and personal property now or hereafter attached to or used in connection with the real estate, which fixtures and personal property shall be deemed to be and form a part of the real estate and covered by the lien hereof.

To secure the payment of a debt evidenced by a certain note representing the principal sum loaned $17,000.00, Seventeen Thousand Dollars, with interest from date to maturity and with interest after maturity as stipulated therein, being of even date and executed concurrently herewith by Robert G. Peters, Jr. and Helen R. Peters, his [fol. 22] wife, drawn at Detroit, Michigan, and payable to the order of The Union Central Life Insurance Company, whose residence and post-office address is Cincinnati, Ohio, where said note is payable on the due dates, in installments or in partial payments prior to maturity, as stipulated therein; the final installment is due and payable on December 1, 1974.

This Mortgage shall secure any and all renewals or extensions of the whole or any part of said indebtedness, however evidenced, with interest at such lawful rate as may be agreed upon, and any such renewals or extensions or any change in the terms or rate of interest shall not impair in any manner the validity of or priority of this mortgage, nor release the Mortgagors from personal liability for the debt hereby secured.

The right is hereby given by the Mortgagors and reserved by the Mortgagee to make partial release or releases of the security hereunder, agreeable to the Mortgagee without notice to, or the consent, approval or agreement of other parties in interest, which partial release or releases shall not impair in any manner the validity of or priority of this mortgage on the security remaining, nor release the personal liability of the Mortgagors for the debt hereby secured.

The Mortgagors for themselves and for their heirs, executors, administrators and assigns, do hereby covenant and agree with the Mortgagee, its successors and assigns, as follows:

1—To pay the note hereby secured according to its tenor and effect and to keep and perform all covenants, conditions and stipulations herein.

2—To pay all taxes, assessments and charges of every character which are now or which hereafter may become [fol. 23] liens on the real estate herein described when due, also all taxes assessed in MICHIGAN against the Mortgagee on this mortgage, or the note or debt hereby secured, before the same become delinquent, provided the amount of such latter taxes, together with interest on the debt hereby secured, does not exceed the maximum permitted by law to be paid, but if it does, the excess is to be paid by the Mortgagee; to deliver to the Mortgagee receipts upon payment thereof, and if not so paid, the Mortgagee may pay such taxes, liens, charges and assessments and this mortgage shall stand as security for the amount so paid with interest.

3—To keep the buildings now on or hereafter erected on the real estate herein described insured at the option and to the satisfaction of the Mortgagee and to deliver

the policies and renewals thereof to the Mortgagee with loss clause satisfactory to the Mortgagee, attached. In case of failure to keep said buildings so insured the Mortgagee may effect such insurance. The Mortgagors hereby assign and transfer to the Mortgagee all right and interest in all policies of insurance carried or to be carried upon said buildings and authorize the Mortgagee to collect for, adjust or compromise any losses under any insurance policies on said buildings and after deducting costs of collection, make application of the proceeds: (a) as a credit upon said note, interest and/or repayment of any amount advanced under any of the covenants or agreements hereof, or (b) to the restoration of the improvements, or (c) to deliver same to the owner of said real estate.

4—To keep the real estate herein described and all buildings, fences and other improvements thereon in as good condition and repair as of this date, and to commit or permit no waste, and to keep within said improvements [fol. 24] all heating, lighting, refrigerating and all other fixtures and applies now in or that may hereafter be placed in said improvements.

5—To pay reasonable attorneys' fees and all costs and expenses of the Mortgagee in case of any litigation involving the real estate herein described or in case of foreclosure of this mortgage, or in presenting claim under any administration or other proceedings where proof of claim is required by law to be filed, or if the note hereby secured is placed in the hands of an attorney for collection and be collected without suit.

6—In case taxes, assessments, liens, charges, attorneys' fees, costs, expenses and insurance premiums are paid as herein provided by the Mortgagee, the amount so paid may be collected from the Mortgagors on demand, together with interest at seven percent per annum from the date of payment and this mortgage shall stand as security therefor.

7—No sale of the premises herein described, no forbearances on the part of the Mortgagee and no extension of the time for the payment of the debt hereby secured given by the Mortgagee shall operate to release, dis-

charge, modify or affect the original liability of the Mortgagors herein nor shall the lien of this mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise, of all or any part of the real estate, the Mortgagee is authorized and empowered to deal with such vendee or transferee with reference to said real estate or the debt hereby secured or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the Mortgagors and without in any way releasing or discharging any of the liabilities or undertakings hereunder or under the note hereby secured.

[fol. 25] 8—Should development for oil, gas or minerals on the real estate herein described at any time, in the opinion of the Mortgagee, render said real estate less desirable as security for the indebtedness hereby secured, then the Mortgagee shall have the right to declare said note and all indebtedness hereby secured due and payable without notice and the Mortgagee shall have the same rights hereunder for the collection of same as though said note had become due by default or maturity.

9—That the Mortgagors shall not be liable for the payment of any charges or interest provided in this mortgage that may be found could not be lawfully made under the law of the State of Michigan, it being fully agreed and understood that it is the intention of the Mortgagee that this mortgage shall in all respects conform to the laws of said State, and should any payments be made by the Mortgagors that are found to be contrary to the laws of said State, the Mortgagors shall be entitled to the return of all sums so paid and this mortgage shall not be affected thereby.

10—That if the Mortgagee now or hereafter becomes the owner or holder of a mortgage or mortgages other than this upon the real estate herein described, or any part thereof, failure to comply with any of the requirements or conditions of either of said mortgages, which failure would mature the indebtedness secured by it, shall mature, at the option of the Mortgagee, the indebtedness under all such mortgages.

11—In case the power of eminent domain is exercised and all or a part of the mortgaged property is taken or

damaged thereunder, then whatever money shall thereby become due the Mortgagors is hereby assigned to and shall be paid to the Mortgagee, who, after deducting its reasonable costs and expenses shall apply the same to- [fol. 26] ward the payment and satisfaction of the indebtedness hereby secured in full or pro tanto. Any surplus of such money over and above the amount necessary to pay in full all indebtedness hereby secured shall be paid by the Mortgagee to the Mortgagor or any person or persons claiming by, through, or under the Mortgagor.

12—Failure of the Mortgagors to pay any tax or insurance premium on security shall constitute waste and entitle the Mortgagee to proceed for the appointment of a receiver as provided in Act 171 of the Public Acts of Michigan of 1937.

13—If the Mortgagors fail to pay said note or any note given in renewal or extension thereof, or as evidence of interest when due, or if the Mortgagors failed to comply with any provision hereof, the whole debt shall thereupon be due and payable at the option of the Mortgagee without notice, and this mortgage foreclosed by judicial proceedings or the Mortgagee sell the security at public auction pursuant to statute and to convey to the purchaser. The Mortgagee shall apply the purchase money to the debt together with the cost of sale and reasonable attorneys' fees and pay any surplus to the Mortgagors. In case of sale the Mortgagee may purchase.

14—Should the Mortgagors fulfill all provisions, conditions, covenants and agreements, this mortgage shall be void and be released by the Mortgagee at the cost and expense of the Mortgagors (and in case of failure of the Mortgagors to release this mortgage, all claims for statutory penalties or damages are hereby waived), otherwise to remain in full force and virtue.

The covenants, provisions and benefits hereto shall inure to and bind the respective heirs, executors, administrators, successors and assigns of the parties hereto. [fol. 27] Wherever used herein, the singular shall include the plural and the plural the singular. The use of any gender shall include all genders. The term "Mortgagee" shall include any payee of the indebtedness hereby secured, or any transferee thereof.

In Testimony Whereof, the Mortgagors sign and seal the day and year first written above.

/s/ Robert G. Peters, Jr. (Seal)
/s/ Helen R. Peters (Seal)

Signed, sealed and delivered
in presence of:

/s/ Edward J. Schanbeck

/s/ E. Marie Gemmill.

IN THE CIRCUIT COURT FOR THE
COUNTY OF OAKLAND, IN CHANCERY

EXCERPTS FROM TESTIMONY

• • • • •

BAGLIN, FRANCIS, called and sworn as a witness testified as follows:

• • • • •

Q. What is your full name?
A. Francis Baglin.
Q. Where are you employed?
A. Union Central Life Insurance Company.
Q. In what capacity?
A. Correspondent representative.

• • • • •

Q. In your capacity as correspondent representative of the Union Central Life Insurance Company, do you have [fol. 28] occasion to search records in the county in which the land is located?
A. I do.
Q. Did you do that in this case?
A. Yes, sir.
Q. Did it come to your attention there was any Federal Tax Lien existing prior to the execution of this mortgage?
A. There was none.
Q. Did you have knowledge of an income tax lien recorded January 11, 1954?
A. I did not.

• • • • •

[fol. 29]

[fol. 30] IN THE SUPREME COURT OF THE STATE OF MICHIGAN

48252

UNION CENTRAL LIFE INSURANCE COMPANY, PLAINTIFF

Clark, Klein, Brucker & Waples

VS.

ROBERT G. PETERS, ET AL., and UNITED STATES OF AMERICA (APPELLANT), DEFENDANTS

Fred W. Kaess
Elmer L. Pfeifle Jr.

Appeal from Oakland in Chancery

DOCKET ENTRIES

1959

May 12	Proof of Claim of appeal filed.
Dec. 11	Notice of filing transcript Sept 18th filed.
" "	Stipulation Filed. Appellant has to Jan 18 to file brief and appendix

1960

Mar 15	Stipulation filed. Plaintiff has until April 1 to file brief and appendix
Apr 7	Record on appeal filed.
" "	Note of Argument filed.
June 7	Argued and Submitted.
Sept 16	Affirmed in part and reversed in part and remanded. No Costs.
Oct. 5	Record returned to Court below.

[fol. 31] IN THE SUPREME COURT OF THE STATE OF MICHIGAN

48252

UNION CENTRAL LIFE INSURANCE CO.

vs.

ROBERT G. PETERS, ET AL.

Present the Honorable

John R. Dethmers,
Chief Justice,
Leland W. Carr,
Harry F. Kelly,
Talbot Smith,
Eugene F. Black,
George Edwards,
Thomas M. Kavanagh,
Theodore A. Souris,
Associate Justices.

ARGUMENT AND SUBMISSION—June 7, 1960

This cause coming on to be heard is argued by Mr. Butler for the plaintiff and by Mr. Shuldinger for the defendants and is duly submitted.

• • • •

[fol. 32] IN THE SUPREME COURT OF THE STATE OF MICHIGAN

THE UNION CENTRAL LIFE INSURANCE COMPANY, a Corporation organized and existing under and by virtue of the laws of the State of Ohio,
PLAINTIFF AND APPELLEE

v.

ROBERT G. PETERS, Jr. and HELEN R. PETERS, his wife,
DEFENDANTS

and

UNITED STATES OF AMERICA, DEFENDANT and APPELLANT

OPINION—Filed September 16, 1960

BEFORE THE ENTIRE BENCH

BLACK, J.

The defendant United States appeals from a decree foreclosing a real estate mortgage, executed by defendants Peters as mortgagors in favor of plaintiff as mortgagee.* The decree grants supremacy of the lien of the mortgage, to extent of all sums due and to become due according to its tenor, over competing federal liens for income taxes Mr. and Mrs. Peters failed to pay for the tax periods 1952, 1953 and 1955.

[fol. 33] It is stipulated, "apart from the legal questions raised in this action relating to priority of liens," that plaintiff's said mortgage "is a valid and subsisting first lien" upon the mortgaged premises. It is stipulated also that 2 of the 3 liens claimed by the United States were recorded only in the office of the clerk of the proper United States District Court, and it is agreed further that the third of such liens (No. P-1697), which is based on 1955 income taxes owing by Mr. and Mrs. Peters, was not recorded in the register of deeds office until July 12, 1957. Shortly thereafter plaintiff paid, as was its self-

* The mortgage was duly recorded in the proper register of deeds office November 24, 1954.

protective right under the terms of the mortgage, unpaid local taxes previously levied against the mortgaged premises. The sum so paid by plaintiff was $646.89.

Refer to §§ 6321, 6322 and 6323 of the revenue code of 1954 (title 26, USCA §§ 6321, 6322 and 6323). Thereunder these federal liens arose against "all property and rights to property" of the taxpayers. Said section 6323 provides that such lien "shall not be valid as against any mortgagee • • • until notice thereof has been filed • • • in the office designated by the law of the State or Territory in which the property subject to the lien is situated • • •." When the events giving rise to this litigation occurred, it was provided by Michigan law (CL 1948, § 211.521) "That whenever the collector of internal revenue • • •, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the State of Michigan • • •, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of [fol. 34] such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated • • •." None of the federal liens for unpaid income taxes owing by Mr. and Mrs. Peters were recorded, according to Michigan statute, excepting as previously noted.

Two questions are presented. Such questions, taken from the respective briefs, are as follows:

> "1. Should a federal tax lien against Robert G. Peters and wife, which was not filed with the Register of Deeds of Oakland County in accordance with the requirements of the Michigan recording statute, be allowed to take priority over the mortgage executed by Robert G. Peters and wife to the Appellee?"
>
> "2. Whether the federal tax liens are entitled to priority over payments made by the mortgagee for local taxes, as well as over payments for such taxes which the mortgagee might make in the future during the redemption period following foreclosure?"

First: For an affirmative answer to stated question 1 defendant United States relies particularly on United States v. Rasmuson, CCA 8, 253 F2d 944. For a negative answer to such question plaintiff relies principally on Youngblood v. United States, CCA 6, 141 F2d 912. Rasmuson and Youngblood were not reviewed by the Supreme Court and it is conceded, with respect to the specific question each court considered, that the Supreme Court has not spoken save only by opposing analogies counsel have pressed upon us. Having considered the briefs and arguments addressed to stated question 1, we accept Youngblood's reasoning and application of our statute as decisive. The question is therefore answered by adoption [fol. 35] of the following conclusion of the court of appeals of the sixth circuit (Youngblood, p 915 of report):

> "United States v. Snyder, 149 U.S. 210, 13 S. Ct. 846, 37 L. Ed. 705, adds no force to the Government's contention for the reason that, while it was there held that the tax system of the United States is not subject to the recording laws of the states, the Acts of Congress since that decision have required recording of United States tax liens: first, in accordance with the law of the state where the property subject to lien is situated; and, later and presently, in the office in which the filing of notices is authorized by the state law. Upon obvious principles of comity, the Congress of the United States has provided for compliance by the Government with state recording laws. The notice of tax lien involved in this controversy does not so comply."

Second: This is the more difficult question. Much though we might agree with the plaintiff mortgagee that a decision to subordinate its mortgage-provided lien, for expenditures made and to be made for protection of its primary lien, is bound to impede if not demoralize the so-called mortgage business in Michigan, there appears no alternative than that of due application of what is known in authoritative federal decisions as the "test of choateness." In plain backyard words, the "test of choateness" as applied in cases as at bar means that a properly recorded business lien, or other lien created by operation

of local law and duly recorded (if record is required), will receive preference over a federal tax lien only to the extent of the fixed (yes, "choate") amount thereof as of due recordation of the competing federal lien. The legal nature of such test will be found in the recent opinion of the 4th circuit in United States v. Bond, —— F2d —— (handed down May 31, 1960 and cited to us since argument of this case). Since the whole ground has been so freshly and thoroughly covered in Bond, and since the federal [fol. 36] courts of appeal are usually better equipped than state courts to appraise and apply decisions of the Supreme Court, we abstain from quotation or discussion of the question and refer the reader to Bond for understanding of our ruling that stated question 2 must be answered by granting supremacy of duly recorded federal tax lien No. P-1697 over the mortgagee's lien for local taxes paid by it after July 12, 1957.

Our concern over this result is shared elsewhere, so much as to give impetus to recent effort of the American Bar Association to correct matters by proposed congressional act.* Nevertheless it is the duty of this State Court

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* "The Federal Government possesses a powerful weapon for the collection of delinquent taxes, a sweeping lien which attaches to all property of the taxpayer, real, personal, or intangible, which he then owns or thereafter acquires. That lien has been a matter of increasingly grave concern to banks in their capacities both as creditors and as debtors of persons who are or may become delinquent in their taxes. That concern is based principally on a series of Supreme Court decisions, most of them unenlightening *per curiam* reversals, which lay down the rule that no contractual or statutory lien can prevail over even a subsequently arising federal tax lien unless the non-federal lien meets a most exacting standard of 'choateness.' Regardless of state laws to the contrary, a private lien securing a contingent or unliquidated claim, or which attaches to a shifting mass of property, is regarded as 'inchoate' and is subordinated even to federal tax liens that did not exist when the private lienor extended credit on the faith of the debtor's property. The alarming trend of those decisions moved the American Bar Association to appoint a special Committee on Federal Liens, whose legislative recommendations were approved by the Association on February 23, 1959." ("Federal Tax Liens: Effects of the American Bar Association Proposals on Banks and Secured Lenders"; The Banking Law Journal, Vol 76, No 5, May, 1959, pp 369, 370).

to follow current decisions of the Supreme Court upon decisive federal questions. This is such a question, since its present solution—shown in Bond—determines the ex- [fol. 37] tent to which Congress has consented that federal tax liens may be subordinated to business or statutory liens. And we have no right to look into the "womb of time" or the "seeds of time" to anticipate a possible doctrine of modification (See Schalle v. Secretary of State, 360 Mich 1, 114). If a state court were possessed of such right, it is likely that a portent of re-examination might be found in the newest decisions of the Supreme Court (See United States v. Brosnan, June 13, 1960, and Acquilino v. United States and United States v. Durham Lumber Co; handed down June 20, 1960). In Acquilino and Durham the Supreme Court hints circumstantially that it may be ready to qualify the mentioned test of "choateness." The hint, however, is neither loud nor clear; hence it is our plain duty to follow the supreme rule Bond expounds from United States v. Security Trust & Sav., 340 US 47; United States v. New Britain, 347 US 81; United States v. Aeri, 348 US 211; United States v. Liverpool & L. & G. Ins. Co., 348 US 215; United States v. Scovil, 348 US 218, and United States v. Ball Constr. Co., 355 US 587.

Affirmed in part and reversed in part, and remanded for entry of decree in accordance with the respective answers we have given to the stated questions. No costs.

Signed: Eugene F. Black,
Harry F. Kelly,
John R. Dethmers,
Leland W. Carr,
Talbot Smith,
George Edwards,
Theodore Souris,
Thomas M. Kavanagh

[File endorsement omitted]

[fol. 38] IN THE SUPREME COURT OF THE STATE OF MICHIGAN

• • • •

48252

THE UNION CENTRAL LIFE INSURANCE COMPANY, PLAINTIFF

vs.

ROBERT G. PETERS, ET AL., and UNITED STATES OF AMERICA (APPELLANT), DEFENDANTS

Present the Honorable

John R. Dethmers,
Chief Justice,
Leland W. Carr,
Harry F. Kelly,
Talbot Smith,
Eugene F. Black,
George Edwards,
Thomas M. Kavanagh,
Theodore A. Souris,
Associate Justices.

JUDGMENT—September 16, 1960

This cause having been brought to this Court by appeal from the Circuit Court for the County of Oakland, in Chancery, and having been argued by counsel, and due deliberation had thereon, it is now ordered, adjudged and decreed by the Court, that the decree of the Circuit Court for the County of Oakland, in Chancery be and the same is hereby AFFIRMED in part and reversed in part and remanded to the court below for the entry of a decree in accordance with the opinion filed herein. And it is further ordered, adjudged and decreed that no costs be awarded herein.

[fol. 39] Clerk's Certificate to foregoing transcript omitted in printing

[fol. 40] SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1960

UNITED STATES, PETITIONER

v.

UNION CENTRAL LIFE INSURANCE CO., ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—December 7, 1960

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including

February 13, 1961

/s/ Potter Stewart
Associate Justice of the Supreme Court of the United States.

Dated this 7th day of December, 1960.

[fol. 41] SUPREME COURT OF THE UNITED STATES

No. 722, October Term, 1960

UNITED STATES, PETITIONER

vs.

UNION CENTRAL LIFE INSURANCE COMPANY

ORDER ALLOWING CERTIORARI—March 27, 1961

The petition herein for a writ of certiorari to the Supreme Court of the State of Michigan is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1961 594020 1295

SUPREME COURT, U.S.

FEB 13 1961

JAMES R. BROWNING, Clerk

No. 52

In the Supreme Court of the United States

OCTOBER TERM, 1960

UNITED STATES OF AMERICA, PETITIONER

v.

THE UNION CENTRAL LIFE INSURANCE COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

ARCHIBALD COX,
Solicitor General,

LOUIS F. OBERDORFER,
Assistant Attorney General,

I. HENRY KUTZ,
FRED B. YOUNGMAN,
Attorneys, Department of Justice,
Washington 25, D.C.

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CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. ——

UNITED STATES OF AMERICA, PETITIONER

v.

THE UNION CENTRAL LIFE INSURANCE COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

The Solicitor General, on behalf of the United States of America, petitions for a writ of certiorari to review the judgment of the Supreme Court of the State of Michigan.

OPINION BELOW

The opinion of the Supreme Court of Michigan (Appendix A, *infra,* pp. 17–22) is reported at 361 Mich. 283, 105 N.W. 2d 196.

JURISDICTION

The judgment of the Supreme Court of Michigan (Appendix A, *infra,* p. 23) was entered on September 16, 1960. On December 7, 1960, Mr. Justice Stewart extended the time for filing a petition for certiorari to and including February 13, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTION PRESENTED

Whether a state can defeat the validity of a federal tax lien on real property by requiring, as a condition to the filing of such lien, that the notice describe the real property to which it attaches.

STATUTES INVOLVED

Sections 3670, 3671, and 3672(a)(1), (2) of the Internal Revenue Code of 1939 and Section 7.751, 6 Michigan Statutes Annotated, are set forth in Appendix B, *infra*, pp. 24–26.

STATEMENT[1]

The State of Michigan follows the so-called Torrens system for the registration of real estate titles. Such registration is effected by filing a description of the property and other information in the appropriate state office. Prior to 1956, Michigan law provided that, when the United States wishes to acquire a tax lien on real or personal property within the state, the federal tax official is authorized to file, with the county register of deeds, a notice of lien setting forth, among other things, "a description of the land upon which a lien is claimed" (Act 104, Public Acts of 1923, 6 Mich. Stat. Ann., Sec. 7.751, Appendix B, *infra*, p. 25). The standard notice of lien form which the federal government customarily uses for recording its liens, however, does not describe the property subject to the lien. For, under the Internal Revenue

[1] The facts were stipulated (R. 8a–12a). Record references are to the Appendix to the Brief for the United States in the Supreme Court of Michigan, which is part of the certified record.

Code, the federal government has a lien automatically on assessment "upon all property and rights to property, whether real or personal, belonging to" a person who, upon demand, neglects or refuses to pay any tax for which he is liable (Section 3670, Internal Revenue Code of 1939; Section 6321, Internal Revenue Code of 1954).

On September 10, 1953, the Attorney General of Michigan issued an opinion (No. 1709) holding that the form used by the United States Treasury for filing tax liens did not comply with the provisions of 6 Mich. Stat. Ann., Section 7.751, in that the form of the notice did not contain a description of the land upon which the lien was claimed. He therefore concluded that it was not entitled to recordation in the office of the register of deeds of any county to Michigan. Between the date of that opinion and August 11, 1956, the effective date of repeal of the cited statute and the substitution of the Michigan Uniform Federal Tax Lien Registration Act (Act No. 107, Public Acts of 1956), it was the policy of the office of the Register of Oakland County not to accept for recording notices of federal tax liens which did not contain a description of the land encumbered (R. 10a–11a).

Federal income taxes for 1952 were assessed against Robert G. Peters, Jr., and Helen R. Peters on January 11, 1954, and notice and demand for payment were sent to the taxpayers on January 13, 1954 (R. 11a). On July 2, 1954, a notice of the tax lien arising from this assessment was filed with the Clerk of the United States District Court for the Eastern Dis-

trict of Michigan, Southern Division, in the principal amount of $1,368.07 (R. 9a–10a). The notice of federal tax lien did not contain a description of the property encumbered by the mortgage (R. 10a). The taxpayers, on November 24, 1954, were the owners of real property located in Oakland County.

On November 10, 1954, the taxpayers executed a mortgage in favor of respondent Union Central Life Insurance Company on real property which they owned in Michigan. The mortgage was duly recorded in the office of the County Register of Deeds (R. 8a–9a). It is stipulated that, apart from legal questions raised in this action relating to priority of the lien as between the United States and the insurance company, this mortgage is a valid first lien upon the land (R. 12a).

Taxpayers having defaulted in payments due under the mortgage, the insurance company brought an action to foreclose it in the Circuit Court for Oakland County, joining the United States as a party defendant. The Circuit Court's decree, granting foreclosure, held that the lien of the mortgage was superior to all tax liens filed by the United States[2] (R. 3a). Upon the government's appeal, the Supreme Court of Michigan affirmed with respect to the tax lien for 1952 taxes, holding that the state had designated an office, within the meaning of Section 6323 of the Internal

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[2] The litigation in the courts below also involved liens arising from assessments of 1953 and 1955 income taxes. Since they arose subsequent to the execution of the mortgage, the issue raised in this petition does not concern these liens.

Revenue Code of 1954,[3] for the filing of notices of tax lien and that this office would have accepted the notice had the United States complied with the state law in setting forth in its notice a description of the land encumbered. The Michigan court noted that *United States* v. *Rasmuson,* 253 F. 2d 944 (C.A. 8)—which held that a tax lien was valid even though it did not contain a description of the real estate encumbered, as required by state law—sustained the contention of the United States. The court, however, rejected the *Rasmuson* decision and accepted "as decisive" the contrary holding in *Youngblood* v. *United States,* 141 F. 2d 912 (C.A. 6), where the Michigan recording statute here involved was also in question.

REASONS FOR GRANTING THE WRIT

The Supreme Court of Michigan has decided a federal question of substance not heretofore determined by this Court which is important in the administration of the revenue and which requires uniformity of construction throughout the United States. Moreover, not only is the decision of the court below incorrect, but it—as well as the decision of the Sixth Circuit in *Youngblood* v. *United States,* 141 F. 2d 912, which the Supreme Court of Michigan followed—conflicts with the

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[3] Although the Michigan court cited the cognate provisions of Section 6323(a) of the Internal Revenue Code of 1954 (Appendix C, *infra*, p. 27), Section 3672(a) of the 1939 Code is the governing provision. By virtue of Section 7851(a)(6)(B) of the 1954 Code, Section 3672 of the 1939 Code applies to taxes imposed under both Codes until January 1, 1955. The critical date here is the date of the recording of the mortgage, namely, November 24, 1954 (R. 8a).

decision of the Court of Appeals for the Eighth Circuit in *United States* v. *Rasmuson*, 253 F. 2d 944.

1. The governing statute, Section 3672(a) of the Internal Revenue Code of 1939 (Appendix B, *infra*, p. 24), provides in substance that a tax lien shall not be valid against any mortgagee, until a notice of it has been filed under state or territorial laws in an office in the state in which the property subject to the lien is situated "whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory." However, "whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory," the notice may be filed with the office of the Clerk of the United States District Court for the judicial district in which the property subject to the lien is situated. Here, the state law authorized filing of the notice of federal tax lien only upon an invalid condition, namely, that the notice contain "a description of the land upon which a lien is claimed." 6 Mich. Stat. Ann., Sec. 7.751 (Appendix B, *infra*, p. 25). Since state law imposed an invalid condition before notice could be filed, the state statute did not in effect authorize filing in an office within the state as provided in Section 3672(a). Thus, the filing in the office of the Clerk of the United States District Court was warranted and effective. That this is the Congressional intent is made clear by the legislative history of Section 3672.

In *United States* v. *Snyder*, 149 U.S. 210, this Court held that a lien imposed by Section 3186 of the Revised Statutes, as amended by Section 3 of the Act

of March 1, 1879, c. 125, 20 Stat. 327, from which the present federal tax lien provisions were derived, was not subject to the laws of a state, which relate to recording or registering mortgages and liens. To alleviate the hardship of this decision as it affected subsequent mortgagees, purchasers, and judgment creditors, Congress amended Section 3186 to provide that the lien thereby created "shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed" in the office of the clerk of the district court of the district within which the property subject to such lien is situated; except that "whenever any State by appropriate legislation authorizes the filing of such notice in the office of the registrar or recorder of deeds of the counties of that State," then such lien shall not be valid in that state as against any mortgagee, purchaser, or judgment creditor "until such notice shall be filed in the office of the registrar or recorder of deeds" of the county in which the property subject to the lien is situated. Act of March 4, 1913, c. 166, 37 Stat. 1016. See *United States* v. *Security Trust & Savings Bank,* 340 U.S. 47, 52–53; H. Rep. No. 1018, 62d Cong., 2d Sess., pp. 1–2.

Section 3186 subsequently was amended by Section 613 of the Revenue Act of 1928, c. 852, 45 Stat. 791,[4] and enacted in the Internal Revenue Code of 1939, Section 3672(a)(1), to provide for the filing of notice of federal tax liens "in accordance with the law of the

[4] See H. Rep. No. 2, 70th Cong., 1st Sess., p. 35 (1939–1 Cum. Bull. (Part 2), 384, 407); S. Rep. No. 960, 70th Cong., 1st Sess., p. 43 (1939–1 Cum. Bull. (Part 2), 409, 439).

State or Territory in which the property subject to the lien is situated," whenever the state or territory has by law provided for the filing of such notice; or in the office of the clerk of the district court for the judicial district in which the property is situated "whenever the State or Territory has not by law provided for the filing of such notice."[*]

In 1923, following the 1913 amendment to Section 3186 of the Revised Statutes, the State of Michigan adopted the Act here in issue (Act 104, Public Acts of 1923, Appendix B, *infra*, pp. 25–26). In *United States* v. *Maniaci*, 36 F. Supp. 293 (W.D. Mich.), affirmed, 116 F. 2d 935 (C.A. 6), it was held that Section 3186 of the Revised Statutes, as thus amended, required compliance by the United States with lien recording statutes of the states. With the obvious purpose of voiding that decision, Section 3672(a)(1) was amended by Section 505 of the Revenue Act of 1942, c. 619, 56 Stat. 957, by inserting "In the office in which the filing of such notice is authorized by the law of the State or Territory" in lieu of "In accordance with the law of the State or Territory." See H. Rep. No. 2333, 77th Cong., 2d Sess., p. 173 (1942–2 Cum. Bull. 372, 498); S. Rep. No. 1631, 77th Cong., 2d Sess., p. 248 (1942–2 Cum. Bull. 504, 686); *United States* v. *Rasmuson, supra*, 253 F. 2d at 946–947; cf. *Union Planters National Bank* v. *Godwin*, 140 F. Supp.

[*] Section 3672(a) of the 1939 Code was amended in a way not material here by Section 401 of the Revenue Act of 1939, c. 247, 53 Stat. 862, to extend the same protection to "pledgees," and to provide the exception found in Section 3672(b) of the 1939 Code. See *United States* v. *Security Trust & Savings Bank*, *supra*, 340 U.S. at 53; H. Rep. No. 855, 76th Cong., 1st Sess., pp. 25–26 (1939–2 Cum. Bull. 504, 523–524).

528 (W.D. Ark.); *United States* v. *Breaux* (S.D. Calif.), decided January 14, 1953 (45 A.F.T.R. 1220). Despite the clear Congressional purpose of the 1942 amendment, as shown in its legislative history, the court below erroneously adopted the reasoning of the *Maniaci* case, which was, even if originally correct, no longer applicable.

That the purpose of the federal statute has at all times since the Act of March 4, 1913—and at least since 1942—been to afford *notice* to mortgagees, pledgees, purchasers, and judgment creditors, rather than to make the validity of federal tax liens depend upon the requirements of state recording statutes, is plain not only from the legislative history discussed above, but is also supported by a new provision added by subsection (b) of Section 6323 of the Internal Revenue Code of 1954 (Appendix C, *infra*, p. 27):

> If the notice filed pursuant to subsection (a)(1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to subsection (a)(2), such notice shall be valid notwithstanding any law of the State or Territory regarding the form of content of a notice of lien.*

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*Treasury Regulations explain this statutory language as follows (Treasury Regulations on Procedure and Administration (1954 Code), Sec. 301.6323–1 (Appendix C, *infra*, p. 28)):

(a) *Invalidity of lien without notice*— * * *

* * * * *

(3) *Form of notice.*—The form to be used for filing the notice of lien shall be Form 668, "Notice of Federal Tax Lien under Internal Revenue Laws". Such notice, filed in the office designated by the law of a State or Territory, shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien.

[Footnote continued on next page]

2. In *United States* v. *Rasmuson, supra,* a notice of federal tax lien was filed in accordance with a state statute providing: "The filing and recording in the office of the register of deeds of any county in this state of notices of liens for taxes due the United States and discharges and releases of such liens is hereby authorized." Minn. Stat. Ann., Sec. 272.48. Minnesota statutes also provided for an optional Torrens system of title registration as to real estate, and the property in issue in the *Rasmuson* case had been so registered. The court of appeals held in that case that the filing of notice of federal tax lien with the county register of deeds was sufficient under Section 3672(a)(1) of the 1939 Code, even though no specific real property was described in the lien. The court determined that the lien of the United States was not required to contain a description of the real property involved in order to be valid against a subsequent judgment lien.

The court below explicitly rejected the holding in *Rasmuson* and relied instead upon *Youngblood* v. *United States, supra.* There, it was held that the United States could not mandamus a register of deeds in Michigan, a ministerial officer of the state, to accept and file a notice of federal tax lien which did not contain any description of land. The court reasoned, relying on *Maniaci,* that the state could require the

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For example, the omission from the notice of lien of a description of the property subject to the lien will not affect the validity thereof, even though the law of the State or Territory requires that the notice of lien contain a description of the property subject to the lien.

federal government to describe the real property encumbered in the notices of tax liens before such notices would be accepted for filing.

The only difference between the instant case and *Rasmuson* is that here, since Michigan law did not provide for "an office in which the filing of such notice is authorized" within the meaning of Section 3672(a)(1) of the 1939 Code, the notice of federal tax lien was filed in the office of the clerk of the proper federal district court, as provided by Section 3672(a)(2). The state Attorney General had ruled prior to the filing of notice of lien herein (R. 10a) that the regular form of notice of lien used by the Treasury Department for such purposes was not entitled to recordation in the office of the register of deeds in any county in the state. Accordingly, it was the policy of the Register of Deeds of Oakland County, where the real property involved here was situated, not to accept for recording notices of federal tax liens "which did not contain a legal description of any land" (R. 11a). If the decisions below and in *Youngblood* are correct, it is obvious that a federal notice of tax lien, not describing the land encumbered, would not be accepted by the Oakland County Register of Deeds and there is no judicial remedy to force his acceptance.

In short, the decision of the Supreme Court of Michigan in the instant case is directly in conflict with the decision in *Rasmuson* in holding that the lien rights of the United States are governed by the recording statutes of the State of Michigan. It was on the basis of this holding that the court below made

its ultimate determination that the filing in the federal district court was not valid.

3. The decision of the Supreme Court of Michigan is not only wrong and in conflict with the *Rasmuson* decision, but it presents a problem of major importance in the administration of the federal internal revenue statutes. Uniformity in the application and administration of the taxing statutes is one of the elemental principles of our system of federal taxation, and such uniformity is no less important in the application and administration of the federal tax lien provisions. The primary purpose of the federal lien recording statutes since the Act of March 4, 1913, has been to afford record notice of existing federal tax liens for the protection of would-be mortgagees, pledgees, purchasers, or judgment creditors acquiring such interest in property of the delinquent taxpayer. Congress has never indicated any intention to subject the federal tax lien to the vicissitudes of varying state statutes other than those providing a *place* for the filing of notice of the federal lien. The extent to which Congress has restricted the federal lien by providing for such notice is a federal question, and should be resolved in a manner to permit uniformity of administration.

Moreover, in view of the tremendous number of federal tax liens that are filed annually, it would impose an intolerable burden on the government if, in order to obtain a valid lien on realty, it had to ascertain the identity of every piece of real estate possessed by a delinquent taxpayer. The principle adopted by the court below would require the gov-

ernment's tax assessors to make checks of real property records in every county where taxpayers conceivably might own real estate for all the hundreds of thousands of tax liens filed each year, in an effort to ascertain each taxpayer's holdings. In fact, since federal liens cover property acquired after the lien arose (*Glass City Bank* v. *United States,* 326 U.S. 265), the tax assessors, in order to protect the government fully, would be required constantly to recheck the real property records to discover whether taxpayers had subsequently acquired any realty. The Code does not impose or even suggest such a requirement; on the contrary, it gives the federal government a broad general lien upon "all property and rights to property" of delinquent taxpayers (Section 3670 of the 1939 Code; Section 6371 of the 1954 Code).

It is true that effective August 11, 1956, the State of Michigan adopted the Uniform Federal Tax Lien Registration Act (Act 107, Public Acts of 1956, 6 Mich. Stat. Ann. (1957 Cum. Supp.), Sec. 7.751, 7.752, and 7.753), which repealed Act 104 of the Public Acts of 1923, and that therefore the present question should not arise with respect to federal tax liens recorded since that date. However, although the records are not available, there appears to be a substantial volume of revenue involved for years prior to August 11, 1956. The records of the Internal Revenue Service show that for the four fiscal years ended June 30, 1957, 1958, 1959, and 1960, a total of 30,383 notices of lien were filed by the District Director's office for the District of Michigan, and it is conservatively estimated by the Collection Division of the

Internal Revenue Service that the number would be at least 4,000 a year for prior years. Thus, an unknown, and possibly substantial, amount of litigation involving this issue may yet arise in the future in the State of Michigan.

Moreover, eleven other states have a Torrens system of land title registration.[7] A large volume of litigation will in all likelihood follow if the present erroneous decision is allowed to stand.[8] With respect to these eleven states we are advised by the Internal Revenue Service that a total of 284,225 notices of federal tax liens were filed during the four year period ending June 30, 1960, as follows: Colorado, 10,317; Georgia, 16,207; Hawaii, 2,013; Illinois, 29,465; Massachusetts 10,784; New York, 108,326;

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[7] Colorado (Colo. Rev. Stat. Ann. (1953), 118-10-1—118-10-102); Georgia (Ga. Code Ann. (1957), Sections 60-101—60-9905 (amendment to Sections 60-423 and 60-424 made by Ga. Laws 1952, pp. 164, 165); Hawaii (Hawaii Rev. Laws (1955), Sections 342-1—347-1); Illinois (Ill. Stat. Ann. (Jones, 1955), Sections 132.001-132.109); Massachusetts (Mass. Ann. Laws (1955), c. 185, Sections 1-118); New York (N.Y. Stat. (McKinney, 1956) Real Prop. Law, Sections 310-435, 400); North Carolina (N.C. Gen. Stat. (1955), Sections 43-1—43-57); Ohio (Ohio Rev. Code (1956, Secs 5309.1-5309.98); Oregon (Ore. Rev. Stat. (1955), Sections 94.005-94.990); Virginia (Va. Code (1950), Section 55-112 (continuing in force original statute given in Va. Code (1919) Sections 5225); Washington (Wash. Rev. Code (1955), Sections 65.12.005-65.12.800).

[8] In seven of the Torrens system states, the statutes provide in substance that any federal liens, which the statutes of the state cannot require to appear of record, are exempt. Under the decision below, federal law does not forbid a state to require federal liens to be of record as provided in the Torrens Acts, that is, to require a description of the property encumbered.

North Carolina, 6,770; Ohio, 57,837; Oregon, 10,307; Virginia, 15,497; Washington 16,702. While the precise number of liens filed in such states in earlier years is not known, it is obviously large, and many problems as to their validity may be yet unresolved. As to the many liens which were created prior to the effective date of Section 6323 of the 1954 Code (January 1, 1955), the latter provision, while supporting the government's position (see *supra*, p. 9), obviously would not directly determine their validity.*

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted.

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FEBRUARY 1961.

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* In fact, the decision below would require a tax lien filed since the 1954 Code became applicable likewise to describe the realty encumbered. For the Michigan Supreme Court erroneously determined the instant case on the basis of the 1954 Code (see *supra*, p. 5).

APPENDIX A

Supreme Court, State of Michigan

THE UNION CENTRAL LIFE INSURANCE COMPANY, A CORPORATION ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF OHIO, PLAINTIFF AND APPELLEE, *v.* ROBERT G. PETERS, JR., AND HELEN R. PETERS, HIS WIFE, DEFENDANTS, AND UNITED STATES OF AMERICA, DEFENDANT AND APPELLANT

Before the entire bench, BLACK, *J.*

The defendant United States appeals from a decree foreclosing a real estate mortgage, executed by defendants Peters as mortgagors in favor of plaintiff as mortgagee.[1] The decree grants supremacy of the lien of the mortgage, to extent of all sums due and to become due according to its tenor, over competing federal liens for income taxes Mr. and Mrs. Peters failed to pay for the tax periods 1952, 1953 and 1955.

It is stipulated, "apart from the legal questions raised in this action relating to priority of liens," that plaintiff's said mortgage "is a valid and subsisting first lien" upon the mortgaged premises. It is stipulated also that 2 of the 3 liens claimed by the United States were recorded only in the office of the clerk of the proper United States District Court, and it is agreed further that the third of such liens (No. P–1697), which is based on 1955 income taxes owing by Mr. and Mrs. Peters, was not recorded in the register of deeds office until July 12, 1957. Shortly thereafter

[1] The mortgage was duly recorded in the proper register of deeds office November 24, 1954.

plaintiff paid, as was its self-protective right under the terms of the mortgage, unpaid local taxes previously levied against the mortgaged premises. The sum so paid by plaintiff was $646.89.

Refer to §§ 6321, 6322 and 6323 of the revenue code of 1954 (title 26, USCA §§ 6321, 6322 and 6323). Thereunder these federal liens arose against "all property and rights to property" of the taxpayers. Said section 6323 provides that such lien "shall not be valid as against any mortgagee * * * until notice thereof has been filed * * * in the office designated by the law of the State or Territory in which the property subject to the lien is situated * * *." When the events giving rise to this litigation occurred, it was provided by Michigan law (CL 1948, § 211.521) "That whenever the collector of internal revenue * * *, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the State of Michigan * * *, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated * * *." None of the federal liens for unpaid income taxes owing by Mr. and Mrs. Peters were recorded, according to Michigan statute, excepting as previously noted.

Two questions are presented. Such questions, taken from the respective briefs, are as follows:

"1. Should a federal tax lien against Robert G. Peters and wife, which was not filed with the Register of Deeds of Oakland County in accordance with the requirements of the Michigan recording statute, be

allowed to take priority over the mortgage executed by Robert G. Peters and wife to the Appellee?"

"2. Whether the federal tax liens are entitled to priority over payments made by the mortgagee for local taxes, as well as over payments for such taxes which the mortgagee might make in the future during the redemption period following foreclosure?"

First: For an affirmative answer to stated question 1 defendant United States relies particularly on United States v. Rasmuson, CCA 8, 253 F2d 944. For a negative answer to such question plaintiff relies principally on Youngblood v. United States, CCA 6, 141 F2d 912. Rasmuson and Youngblood were not reviewed by the Supreme Court and it is conceded, with respect to the specific question each court considered, that the Supreme Court has not spoken save only by opposing analogies counsel have pressed upon us. Having considered the briefs and arguments addressed to stated question 1, we accept Youngblood's reasoning and application of our statute as decisive. The question is therefore answered by adoption of the following conclusion of the court of appeals of the sixth circuit (Youngblood, p. 915 of report):

"United States v. Snyder, 149 U.S. 210, 13 S. Ct. 846, 37 L. Ed. 705, adds no force to the Government's contention for the reason that, while it was there held that the tax system of the United States is not subject to the recording laws of the states, the Acts of Congress since that decision have required recording of United States tax liens: first, in accordance with the law of the state where the property subject to lien is situated; and, later and presently, in the office in which the filing of notices is authorized by the state law. Upon obvious principles of comity, the Congress of the United States has provided for compliance by the Government with state recording laws. The notice

of tax lien involved in this controversy does not so comply."

Second: This is the more difficult question. Much though we might agree with the plaintiff mortgagee that a decision to subordinate its mortgage-provided lien, for expenditures made and to be made for protection of its primary lien, is bound to impede if not demoralize the so-called mortgage business in Michigan, there appears no alternative than that of due application of what is known in authoritative federal decisions as the "test of choateness." In plain backyard words, the "test of choateness" as applied in cases as at bar means that a properly recorded business lien, or other lien created by operation of local law and duly recorded (if record is required), will receive preference over a federal tax lien only to the extent of the fixed (yes, "choate") amount thereof as of due recordation of the competing federal lien. The legal nature of such test will be found in the recent opinion of the 4th circuit in United States v. Bond, — F 2d — (handed down May 31, 1960 and cited to us since argument of this case). Since the whole ground has been so freshly and thoroughly covered in Bond, and since the federal courts of appeal are usually better equipped than state courts to appraise and apply decisions of the Supreme Court, we abstain from quotation or discussion of the question and refer the reader to Bond for understanding of our ruling that stated question 2 must be answered by granting supremacy of duly recorded federal tax lien No. P-1697 over the mortgagee's lien for local taxes paid by it after July 12, 1957.

Our concern over this result is shared elsewhere, so much as to give impetus to recent effort of the American Bar Association to correct matters by proposed

congressional act.[2] Nevertheless it is the duty of this State Court to follow current decisions of the Supreme Court upon decisive federal questions. This is such a question, since its present solution—shown in Bond—determines the extent to which Congress has consented that federal tax liens may be subordinated to business or statutory liens. And we have no right to look into the "womb of time" or the "seeds of time" to anticipate a possible doctrine of modification (See Scholle v. Secretary of State, 360 Mich 1, 114). If a state court were possessed of such right, it is likely that a portent of re-examination might be found in the newest decisions of the Supreme Court (See United States v. Brosnan, June 13, 1960, and Acquilino v. United States and United States v. Dur-

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[2] "The Federal Government possesses a powerful weapon for the collection of delinquent taxes, a sweeping lien which attaches to all property of the taxpayer, real, personal, or intangible, which he then owns or thereafter acquires. That lien has been a matter of increasingly grave concern to banks, in their capacities both as creditors and as debtors of persons who are or may become delinquent in their taxes. That concern is based principally on a series of Supreme Court decisions, most of them unenlightening *per curiam* reversals, which lay down the rule that no contractual or statutory lien can prevail over even a subsequently arising federal tax lien unless the non-federal lien meets a most exacting standard of 'choateness.' Regardless of state laws to the contrary, a private lien securing a contingent or unliquidated claim, or which attaches to a shifting mass of property, is regarded as 'inchoate' and is subordinated even to federal tax liens that did not exist when the private lienor extended credit on the faith of the debtor's property. The alarming trend of those decisions moved the American Bar Association to appoint a special Committee on Federal Liens, whose legislative recommendations were approved by the Association on February 23, 1959." ("Federal Tax Liens: Effects of the American Bar Association Proposals on Banks and Secured Lenders"; The Banking Law Journal, Vol 76, No. 5, May, 1959, pp. 369, 370).

ham Lumber Co; handed down June 20, 1960). In Acquilino and Durham the Supreme Court hints circumstantially that it may be ready to qualify the mentioned test of "choateness." The hint, however, is neither loud nor clear; hence it is our plain duty to follow the supreme rule Bond expounds from United States v. Security Trust & Sav., 340 US 47; United States v. New Britain, 347 US 81; United States v. Acri, 348 US 211; United States v. Liverpool & L. & G. Ins. Co., 348 US 215; United States v. Scovil, 348 US 218, and United States v. Ball Constr. Co., 355 US 587.

Affirmed in part and reversed in part, and remanded for entry of decree in accordance with the respective answers we have given to the stated questions. No costs.

Stamped: Filed September 16, 1960.

DONALD F. WINTERS,
Clerk, Supreme Court.

Signed: EUGENE F. BLACK.
HARRY F. KELLY.
JOHN R. DETHMERS.
LELAND W. CARR.
TALBOT SMITH.
GEORGE EDWARDS.
THEODORE SOURIS.
THOMAS M. KAVANAGH.

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 16th day of September in the year of our Lord one thousand nine hundred and sixty.

Present the Honorable JOHN R. DETHMERS, *Chief Justice*, LELAND W. CARR, HARRY F. KELLY, TALBOT SMITH, EUGENE F. BLACK, GEORGE EDWARDS, THOMAS M. KAVANAGH, THEODORE A. SOURIS, *Associate Justices.*

No. 48252

THE UNION CENTRAL LIFE INSURANCE COMPANY, PLAINTIFF, *v.* ROBERT G. PETERS, ET AL. AND UNITED STATES OF AMERICA (APPELLANT), DEFENDANTS

This cause having been brought to this Court by appeal from the Circuit Court for the County of Oakland, in Chancery, and having been argued by counsel, and due deliberation had thereon, it is now ordered, adjudged and decreed by the Court, that the decree of the Circuit Court for the County of Oakland, in Chancery be and the same is hereby affirmed in part and reversed in part and remanded to the court below for the entry of a decree in accordance with the opinion filed herein. And it is further ordered, adjudged and decreed that no costs be awarded herein.

APPENDIX B

Internal Revenue Code of 1939:

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(26 U.S.C. (1952 ed.) 3670)

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(26 U.S.C. (1952 ed.) 3671)

SEC. 3672 [as amended by Sec. 401 of the Revenue Act of 1939, c. 247, 53 Stat. 862, and Sec. 505 of the Revenue Act of 1942, c. 619, 56 Stat. 798]. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien without Notice.*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under state or territorial laws.*—In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is

situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With clerk of district court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

* * * * *

(26 U.S.C. (1952 ed.) 3672)

6 Michigan Statutes Annotated:

CHAP. 63. MISCELLANEOUS PROVISIONS

* * * * *

FILING OF FEDERAL TAX LIENS

Act 104, 1923, p. 142; eff. Aug. 30

An Act to provide for and to authorize the filing of notices of federal tax liens by the United States of America in the office of the register of deeds in the various counties of this state, pursuant to section three thousand one hundred eighty-six [3186] of the revised statutes of the United States.

The People of the State of Michigan Enact:

SEC. 7.751. *U.S. Tax Liens; Filing of Notice, Contents; Register of Deeds, Duty.* Section 1. That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the State of Michigan pursuant to section three thousand one hundred eighty-six [3186] of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting

forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty [50] cents for such notice, file and index the same in a separate book, entitled "Record of the United States Tax Liens," indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred eighty-six [3186] of the revised statutes of the United States. (C.L. '48, § 3746.)

APPENDIX C

Internal Revenue Code of 1954:

SEC. 6323. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien Without Notice.*—Except as otherwise provided in subsection (c), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate—

(1) *Under state or territorial laws.*—In the office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

(2) *With Clerk of district court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

(3) *With clerk of district court for District of Columbia.*—In the office of the clerk of the United States District Court for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) *Form of Notice.*—If the notice filed pursuant to subsection (a)(1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to subsection (a)(2), such notice shall be valid not-

withstanding any law of the State or Territory regarding the form or content of a notice of lien.

* * * * *

(26 U.S.C. 6323)

Treasury Regulations on Procedure and Administration (1954 Code):

SEC. 301.6323–1. *Validity of lien against mortgagees, pledgees, purchasers, and judgment creditors.*—(a) *Invalidity of lien without notice*— * * *

* * * * *

(3) *Form of notice.*—The form to be used for filing the notice of lien shall be Form 668, "Notice of Federal Tax Lien under Internal Revenue Laws". Such notice, filed in the office designated by the law of a State or Territory, shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien. For example, the omission from the notice of lien of a description of the property subject to the lien will not affect the validity thereof, even though the law of the State or Territory requires that the notice of lien contain a description of the property subject to the lien.

* * * * *

IN THE

Supreme Court of the United States

OCTOBER TERM, 196[illegible]

No. [illegible]5[illegible]

UNITED STATES OF AMERICA,
Petitioner,
vs.
THE UNION CENTRAL LIFE INSURANCE COMPANY,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF FOR RESPONDENT IN OPPOSITION

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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Supreme Court of the State of Michigan (Appendix A, pp. 17-22 of Petition) is reported at 361 Mich. 283, 105 N. W. 2d 196.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Whether a state can protect local property interests by requiring, as a condition to the filing of a notice of federal tax lien, that the notice of said lien describe the real property to which it attaches.

STATUTES INVOLVED

Sections 3670, 3671 and 3672 (a) (1), (2) of the Internal Revenue Code of 1939 and Sec. 6323 of the Internal Revenue Code of 1954 and 6 Mich. Stat. Ann. 7.751 are set forth in Appendices B and C, pp. 24-26 of the Petition.

STATEMENT

Petitioner's statement, commencing on p. 2 of the Petition, is entirely erroneous in part and demands clarification in other respects.

The assertion is made in the Petition that "the State of Michigan follows the so-called Torrens system for the registration of real estate titles." Footnote 1 of the Petition states that the facts were stipulated thereby indicating that Respondent stipulated to the fact that Michigan was a Torrens system state. As a matter of fact neither the

Torrens system nor any other system for registration of land titles is now in effect in the State of Michigan and no such system has ever been in effect in this state. Consequently, Respondent would not and did not stipulate this fact. One of the principal reasons urged for the granting of the Petition is that the Torrens system is in effect in eleven other states, and, if the present decision of the Michigan Supreme Court is allowed to stand, a large volume of litigation might follow. It is obvious therefore that the fact that the Torrens system is not operative in Michigan automatically disposes of one of the main reasons proposed for the granting of the Petition, and removes much of the force of Petitioner's entire argument for the Writ.

The facts as regards the Federal statute providing for the filing of notices of United States tax liens as set forth in the Petition require clarification. The Petition creates the erroneous impression that the Michigan recording statute (Act 104 of the Public Acts of 1923, 6 Mich. Stat. Ann. Sec. 7.751), requiring all notices of United States tax liens to contain a legal description of the land for recording purposes, was enacted in complete disregard and violation of the applicable provisions of the Internal Revenue Code. Such was by no means the case, as the following facts disclose.

The pertinent portion of Sec. 3672(a) of the Internal Revenue Code read as follows:

> "(a) Invalidity of Lien without Notice.—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the creditor—
>
> "(1) Under State or Territorial Laws.—In accordance with the law of the State or Territory in which the property subject to the lien is situated,

whenever the State or Territory has by law provided for the filing of such notice; or

"(2) With Clerk of District Court.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or * * *."

Under the 1942 Amendment to Sec. 3672(a), the phrase "in accordance with the law of a State or Territory" was deleted, and the phrase "in the office in which the filing of the notice is authorized by the State or Territory" was substituted.

Nevertheless, in *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6), where the cause of action arose after the amendment, the Circuit Court of Appeals for the Sixth Circuit held that this change in the wording of the statute did not alter the legal situation as to the recording of the notice of lien and that Congress did not intend by this language to impeach a State's right to protect its citizens by imposing reasonable requirements with respect to recordation. The above construction of the statute has become a rule of property in this State and has been relied on for many years by those acquiring an interest in real estate, as well as title companies issuing policies of insurance.

The Michigan statute providing for the recording of notices of federal tax liens was enacted in 1923, long before the 1942 amendment to the applicable provision of the United States Internal Revenue Code above quoted, and remained on the statute books until 1956 when it was repealed.

As stated in the Petition, there was a further amendment to the federal act which appears in Section 6323 of the Internal Revenue Code of 1954, and which provides that if the notice of lien is in such form as would be valid if filed with the Clerk of the United States District Court it will be valid notwithstanding any law of the State or Territory regarding the form or content of the notice of lien. This amendment, however, did not become effective until January 1, 1955, which is subsequent to the date of the filing of the notice of tax lien which is the subject of this litigation, the latter having been filed on July 2, 1954. The mortgage from Robert G. Peters, Jr. and Helen R. Peters, his wife, to The Union Central Life Insurance Company was executed on November 10, 1954 and recorded November 24, 1954.

ARGUMENT

I.

THE DECISION BELOW REFLECTS THE POLICY OF THE UNITED STATES SUPREME COURT

The policy of the Supreme Court of the United States with respect to federal tax liens is well stated in the case of *United States v. Brosnan*, 363 U. S. 237, 241, from which we quote as follows:

> "We nevertheless believe it desirable to adopt as federal law state law governing divestiture of federal tax liens, except to the extent that Congress may have entered the field. It is true that such liens form part of the machinery for the collection of federal taxes, the objective of which is 'uniformity, as far as may be'. *United States v. Gilbert Asso-*

> *ciates*, 345 U. S. 361, 364, 73 S. Ct. 701, 703, 97 L. Ed. 1071. However, when Congress resorted to the use of liens, it came into an area of complex property relationships long since settled and regulated by state law. We believe that, so far as this Court is concerned, the need for uniformity in this instance is outweighed by the severe dislocation to local property relationships which would result from our disregarding state procedures. Long accepted non-judicial means of enforcing private liens would be embarrassed, if not nullified where federal liens are involved, and many titles already secured by such means would be cast in doubt. We think it more harmonious with the tenets of our federal system and more consistent with what Congress has already done in this area, not to inject ourselves into the network of competing private property interests, by displacing well-established state procedures governing their enforcement, or superimposing on them a new federal rule. Cf. *Board of Com'rs of Jackson County v. United States*, 308 U. S. 343, 60 S. Ct. 285, 84 L. Ed. 313."

It has been a long-established policy of the Legislature and Courts of the State of Michigan to give full recognition and protection to the recording laws of the State, to the end that they may be relied upon insofar as is practicable to furnish evidence of the ownership and validity of interests in real estate. The Michigan Legislature, for example, has always required that notices of levy on execution and attachments contain a legal description of the land intended to be subjected thereto. Judgments alone in Michigan do not constitute a lien on real estate. This purpose would have been seriously impaired by the indiscriminate filing of instruments containing no legal description of the land affected thereby, particularly where the then existing statutes and court decisions indicated that a description was

necessary. Prior to the 1942 amendment the federal statute pertaining to the recording of notices of federal tax liens gave recognition to this policy and similar long-established policies of other States by providing for the filing of such notice *in accordance with the law of the State or Territory in which the property subject to the lien is situated.* The case of *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6) held that by the 1942 amendment Congress did not intend to effect any fundamental change in the law, and did not intend thereby to impeach a State's rights to protect its citizens by imposing reasonable requirements with respect to recordation. It is our contention therefore that the *Youngblood* decision is much more in harmony with the language above quoted from *United States v. Brosnan,* 363 U. S. 237, than is the holding in the case of *United States v. Rasmuson,* 253 F. 2d 944 (C.A. 8), which was decided in another Circuit and pertained to a jurisdiction where the Torrens system of land titles was in effect. The decision in *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6), has become a rule of property in the State of Michigan and many individuals purchasing real estate or interests therein, as well as title and mortgage companies have, as a consequence, relied upon the records of the Register of Deeds rather than make additional searches in other offices where a notice of lien might be filed. In modern times the pressure of business is too great for one to do those things which the law tells them is unnecessary. In accordance with the policy of the United States Supreme Court as outlined in the *Brosnan* case, *supra,* the decision in *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6), should not be over-ruled.

II.

THERE IS NO SUBSTANTIAL FEDERAL QUESTION

After the effective date of the 1954 amendment to the federal statute concerning notices of tax liens, it is conceded that States and Territories could no longer prescribe the form and content of a notice of federal tax lien but merely designate an office for filing. Subsequently the Michigan statute requiring the insertion of a description of the land in question in all notices of federal tax liens, as a prerequisite for recording in the office of the Register of Deeds, was repealed, although the repeal did not take place until 1956 (Act 107, Public Acts of 1956, 6 Mich. Stat. Ann. Sec. 7.751, 7.752, 7.753). In the vast majority of cases where notices of federal tax liens have been filed against mortgaged property where foreclosures or other priority contests have arisen the notices have been filed since the effective date of the 1954 amendment. Much is made in the Petition of the fact that, according to estimate, four thousand notices of liens were filed annually in Michigan prior to 1957. The effect of this figure is very misleading. In the first place, a considerable percentage of these notices of lien must have been filed against persons who had no real estate. Secondly, even where the taxpayer owned real estate, a further percentage was doubtless filed against persons who had created no subsequent interests in their land, so that no question of priority could have arisen. Thirdly, in those cases where mortgages on real estate do exist, the records show repeated instances where notices of federal tax liens were filed after the recording of the mortgages so that the tax liens would in any event be subordinate, regardless of the place of filing, or whether they contained a description or not. In other words, the Government's ground for concern would be limited to those

cases where both (1) the notice of tax lien was filed prior to the effective date of the 1954 amendment, and (2) the taxpayer had real estate encumbered by a mortgage or had conveyed by an instrument, which in either case was recorded after the filing of the federal tax lien. We venture to state that the number of cases where the above set of facts concurrently exist constitute but a very small fraction of the number of annual liens mentioned in the Solicitor General's petition. The Petition does not disclose any cases presently pending in which the question is in controversy. Furthermore, as time goes on, the number of cases involving the situation complained of in the petition must necessarily diminish so that in a comparatively short period of time the question will become entirely academic. We submit that even at the present time this number is so small, and its effect on the revenue collecting agencies of the Government is of such minor consequence that the petition for a writ of certiorari should be denied.

III.

EFFECT OF STATUTE OF LIMITATIONS

Lastly, and most important of all, the enforcement of United States tax liens is barred by the statute of limitations, after the expiration of a period of six years from the date of assessment. Hence the six-year limitation period would normally have expired January 1, 1961, at the latest, as to all liens, notice of which was filed prior to the effective date of the 1954 amendment. As previously stated, no question can be raised as to the priority of those notices of lien filed after January 1, 1955 because of failure to include a legal description of the land in question.

It is true that the running of the statute of limitations is suspended in certain instances, but questions can now arise only in those cases where the statute has been tolled, and then only where the special set of circumstances described in the preceding paragraphs exist. Therefore, the number of liens filed prior to January 1, 1955, where the possibility of contest exists because of a lack of legal description, must necessarily be further reduced to a point which is absurdly low and in all probability negligible. Even this small number is continually decreasing with the passage of time.

Accordingly, it is submitted that the petition for the writ of certiorari should be denied for the following reasons:

1) The fact that the statement that Michigan operates under the Torrens system is completely erroneous removes one of the principal reasons, if not the main reason, urged for the granting of the writ of certiorari.

2) The decision of the Circuit Court of Appeals in *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6), is much more in harmony with the policy of the United States Supreme Court as enunciated in *United States v. Brosnan,* 363 U. S. 237, 241, than the decision in the case of *United States v. Rasmuson,* 253 F. 2d 944 (C. A. 8).

3) Subject to the statements contained in paragraph 4) following, a question of priority can only arise in those cases where the notice of lien was filed prior to January 1, 1955 against a taxpayer whose land has subsequently been encumbered by a mortgage or where he has subsequently sold and conveyed his land, or some interest therein, to another person or persons.

4) All cases where questions of priority can exist are now barred by the statute of limitations and can arise only where the running of the statute has been suspended. While figures are not, and in the nature of things cannot be available, it seems evident that those cases where a contest would now be possible must be negligible. In any event, the entire question will very soon become completely academic.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for writ of certiorari should be denied.

Respectfully submitted,

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No. 52

In the Supreme Court of the United States

OCTOBER TERM, 1961

UNITED STATES OF AMERICA, PETITIONER

v.

THE UNION CENTRAL LIFE INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Supreme Court of the State of Michigan (R. 27–31) is reported at 361 Mich. 283, 105 N.W. 2d 196.

JURISDICTION

The judgment of the Supreme Court of Michigan (R. 32) was entered on September 16, 1960. On December 7, 1960, Mr. Justice Stewart extended the time for filing a petition for a writ of certiorari to and including February 13, 1961. (R. 33.) The petition for a writ of certiorari was filed on February 13, 1961, and was granted on March 27, 1961. (R. 34; 365 U.S. 858.) The jurisdiction of this Court rests on 28 U.S.C. 1257(3).

QUESTION PRESENTED

Whether a state can defeat the validity of a federal tax lien on real property by requiring, as a condition to the filing of notice of such lien, that the notice describe the property to which it attaches.

STATUTES INVOLVED

Sections 3670, 3671, and 3672(a) (1) and (2) of the Internal Revenue Code of 1939, and Section 7.751, 6 Michigan Statutes Annotated (1936 ed.), are set forth in Appendix A, *infra*, pp. 22–24.

STATEMENT

The facts are stipulated. (R. 8–11.) The issue is whether, in this action to foreclose a real estate mortgage, the court below erred in holding that the mortgage lien has priority over a competing federal lien arising out of the mortgagors' non-payment of 1952 federal income taxes. (R. 27.)

The pertinent statutory provisions. Prior to 1956, Michigan law provided that, when the United States wished to acquire a tax lien on real or personal property within the state, the federal tax official was authorized to file, with the county register of deeds, a notice of lien setting forth, among other things, "a description of the land upon which a lien is claimed" (Act 104, Public Acts of 1923, 6 Michigan Statutes Annotated (1936 ed.), Sec. 7.751, Appendix A, *infra*, p. 23).[1] The standard form of notice which the federal

[1] This statute was repealed effective August 11, 1956, and, in place thereof, Michigan enacted the Uniform Federal Tax Lien Registration Act (Act No. 107, Public Acts of 1956, p. 213, 6 Michigan Statutes Annotated (1960 revision), Sec. 7.753). The Uniform Act does not require any description of the land upon which the lien is asserted.

government customarily uses for filing its tax liens, however, does not describe the property subject to the lien (Treasury Regulations on Procedure and Administration (1954 Code), Sec. 301.6323–1(a)(3), Appendix B, *infra*, p. 26; see Opinion of the Attorney General of Michigan, No. 1709, dated September 10, 1953, Appendix C, *infra*, p. 28). For, under the Internal Revenue Code, the federal government has a lien "upon all property and rights to property, whether real or personal, belonging to" a person who, upon demand, neglects or refuses to pay any tax for which he is liable (Section 3670, Internal Revenue Code of 1939, Appendix A, *infra*, p. 22; Section 6321, Internal Revenue Code of 1954).

On September 10, 1953, the Attorney General of Michigan issued an opinion (No. 1709) that the standard form used by the United States Treasury for filing tax liens did not comply with the foregoing Michigan statute, because it did not contain a description of the land upon which the lien was claimed. He therefore concluded that the federal tax lien notice was not entitled to recordation in the office of the register of deeds of any county in Michigan (Appendix C, *infra*, pp. 27–29). (R. 10.) Between the date of that opinion and August 11, 1956, the effective date of repeal of the statute and the substitution of the Michigan Uniform Federal Tax Lien Registration Act (see note 1, *supra*), it was the policy of the office of the Register of Oakland County not to accept for recording notices of

federal tax liens which did not contain a description of the land encumbered. (R. 10.)

The proceedings in the present case. Federal income taxes for 1952, in the principal amount of $1,368.07, were assessed against Robert G. Peters, Jr., and Helen R. Peters on January 11, 1954, and notice and demand for payment were sent to the taxpayers on January 13, 1954. (R. 11.) On July 2, 1954, a notice of the tax lien arising from this assessment was filed with the Clerk of the United States District Court for the Eastern District of Michigan, Southern Division. (R. 9.) The notice did not contain a description of any real property owned by the taxpayers. (R. 10.)

On November 10, 1954, the taxpayers executed a mortgage in favor of respondent Union Central Life Insurance Company on real property which they owned in Oakland County, Michigan. The mortgage was duly recorded in the office of the County Register of Deeds on November 24, 1954. (R. 8–9.) It is stipulated that, apart from legal questions raised in this action relating to priority of the lien as between the United States and the insurance company, this mortgage is a valid first lien upon the land. (R. 11.)

Upon the taxpayers' default in payments due under the mortgage, the insurance company brought an action to foreclose it in the Circuit Court for Oakland County, joining the United States as a party defendant. The Circuit Court's decree, granting foreclosure, held that the lien of the mortgage was superior to all tax liens filed by the United

States.[2] (R. 4.) Upon the government's appeal, the Supreme Court of Michigan affirmed with respect to the tax lien for 1952 taxes.[3] It held that the state had designated an office, within the meaning of Section 6323 of the Internal Revenue Code of 1954,[4] for the filing of notices of tax lien, and that this office would have accepted the notice had the United States complied with the state law in setting forth in its notice a description of the land encumbered. The court noted that *United States* v. *Rasmuson*, 253 F. 2d 944 (C.A. 8)—which held that a federal tax lien was valid even though the notice did not contain a description of the real estate encumbered, as required by state law—sustained the contention of the United States. The court, however, rejected the *Rasmuson* decision and instead accepted "as decisive" the contrary holding in *Youngblood* v. *United States*, 141 F. 2d 912 (C.A. 6), a case which involved the Michigan recording statute here involved. (R. 28–29.)

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[2] The litigation in the courts below also involved liens arising from assessments of 1953 and 1955 income taxes. Since those liens arose subsequent to the execution of the mortgage, they are not involved in the issue before this Court.

[3] On the other issue presented to it, the Michigan Supreme Court upheld the government's contention that the federal tax lien had priority over payments for local taxes made by the mortgagee. (R. 28–31.) No review was sought of that ruling.

[4] Although the Michigan court referred to Section 6323 of the Internal Revenue Code of 1954 (Appendix B, *infra*, p. 25), Section 3672(a) of the 1939 Code (Appendix A, *infra*, p. 22) is the governing provision. Section 7851(a)(6)(B) of the 1954 Code makes Section 3672 of the 1939 Code applicable to taxes imposed under both Codes until January 1, 1955. In the instant case, the federal taxes were assessed, and the federal tax lien and the mortgage were recorded, prior to that date.

SUMMARY OF ARGUMENT

The United States has a statutory lien "upon all property and rights to property, whether real or personal" of any person liable for a tax who, after demand, fails to pay (Section 3670, 1939 Code). The lien, however, is not valid as against any mortgagee, pledgee, purchaser or judgment creditor, unless notice thereof has been filed by the collector (1) in an office in which the state or territory where the property is located "has by law authorized the filing of such notice * * *"; or, (2) if the state or territory "has not by law authorized the filing of such notice in an office within the State or Territory," in the office of the clerk of the United States district court for the district in which the property subject to the lien is situated (Section 3672).

When the federal tax lien here involved arose, Michigan authorized the filing of notices thereof in the office of the register of deeds only if the notice contained "a description of the land upon which a lien is claimed." The standard form used by the United States for filing its notice of tax lien does not describe any of the property to which the lien attaches. It is stipulated that the register of deeds of the county in which the real property here involved is situated would not have accepted for filing a federal notice of lien which did not describe the property.

We submit that the State of Michigan cannot require, as a condition of filing a federal tax lien, that the notice describe the real property subject to the lien. Since that condition is invalid, the state has not "authorized the filing of such notice in an office

within the State." In such circumstances, the filing by the United States of its notice of lien with the clerk of the district court gave its lien priority over the subsequently arising mortgage lien.

1. The federal lien for unpaid taxes is a broad lien that attaches to "all" property, including after-acquired property, of a delinquent taxpayer. It is a federal question whether the state can require, as a condition to the filing of notice of such lien, that it describe the real property encumbered.

2. The legislative history of the statutory provisions governing the filing of federal tax liens shows that Congress merely intended to permit the states to designate the *place,* but not the *requirements,* of filing. The first statute for the filing of federal tax liens was passed in 1913, in order to alleviate the hardships that had resulted from the decision in *United States* v. *Snyder,* 149 U.S. 210, holding, under an earlier federal lien statute which did not provide for the filing of notice, that the federal tax lien was valid as against a bona fide purchaser who had neither notice nor knowledge of such lien. The 1913 statute provided for filing in the district court or, where a state had so authorized, with the county registrar or recorder. The statute was amended in 1928 to provide that the lien was not valid against mortgagees, etc., unless notice was filed "in accordance with" the law of a state or territory which had provided for such filing or, if the state or territory had not so provided, with the clerk of the district court. Under these provisions, it was held, under the same Michigan statute as is here involved, that a notice of lien which did not describe the

real property did not give the federal lien priority over a subsequent purchaser. *United States* v. *Maniaci*, 36 F. Supp. 293 (W.D. Mich.), affirmed *per curiam*, 116 F. 2d 935 (C.A. 6).

Shortly after that decision, the statute was again amended. The provision that, as against mortgagees, etc., the federal lien was not valid until filed "in accordance with" state law was changed to provide that it was not valid until filed as "authorized by" state law. The committee reports show that this change was intended to clarify existing law to make it clear that a state may designate only the local office for filing a federal lien, but cannot impose other requirements. H. Rept. No. 2333, 77th Cong., 2d Sess., p. 173; S. Rept. No. 1631, 77th Cong., 2d Sess., p. 248. This view of the limited authority of the states is further supported by Section 6323(b) of the 1954 Code, which provides that a notice of lien filed with the state is valid if filed in such form as would be valid if filed in the district court. The committee report stated that this latter provision was merely "declaratory of the existing procedure and in accordance with the long-continued practice of the Treasury Department" that the state may designate only the place of filing; and that "the omission from the notice of lien of a description of the property subject to the lien would not affect the validity thereof, even though the law of the State or Territory requires that the notice of lien contain a description of the property subject to the lien." H. Rept. 1337, 83d Cong., 2d Sess., pp. A406–A407.

Unlike the situation in *United States* v. *Brosnan*, 363 U.S. 237, 240, 242, there is here "a congressional

direction" against the adoption of "local policy * * * as the governing federal law." For Congress has affirmatively stated that the states may specify only the place, but not the requirements for filing federal tax liens.

3. The ruling below that the state can require the United States to describe, in its notice of lien, the real property subject to the tax would impose an unwarranted burden on the United States that would seriously reduce the efficacy of the federal lien as a means of collecting taxes. Tax assessors would be required to make constant checks of real property records in every county where a delinquent taxpayer conceivably might own real estate. There should not be ascribed to Congress the intention to create such a burdensome and unwieldy system of tax collection unless such a purpose clearly appears either in the statute or its legislative history. No such purpose appears here.

4. Permitting a state to apply its own filing requirements to federal tax liens would also defeat the settled principle of achieving uniformity in the enforcement of the tax laws. Congress has never indicated any disposition to subject federal tax liens to the viscissitudes of varying state statutes other than those providing a place for the filing of a notice. Under the decision below, however, the extent and validity of federal tax liens would vary from state to state, depending upon the particular filing requirements of the states. In this case, unlike *Brosnan, supra* (363 U.S. at 242), the "need for uniformity" is not "outweighed by the severe dislocation to local property relationships which would result from our

disregarding state procedures." For there would be no such dislocation if the states were denied the power to prescribe the contents of federal lien notices.

ARGUMENT

A STATE CANNOT DEFEAT THE VALIDITY OF A FEDERAL TAX LIEN ON REAL PROPERTY BY REQUIRING, AS A CONDITION TO THE FILING OF SUCH LIEN, THAT THE NOTICE DESCRIBE THE PROPERTY TO WHICH IT ATTACHES

The United States has a statutory lien "upon all property and rights to property, whether real or personal" of any person liable for any tax who, after demand, fails to pay (Section 3670, 1939 Code). The lien arises when the assessment list is received by the collector (Section 3671). The lien, however, is not valid as against any mortgagee, pledgee, purchaser, or judgment creditor, until notice thereof has been filed by the collector (1) in an office in which the state or territory where the property is located "has by law authorized the filing of such notice * * *"; or, (2) if the state or territory "has not by law authorized the filing of such notice in an office within the State or Territory," in the office of the clerk of the United States district court for the district in which the property subject to the lien is situated (Section 3672).

When the federal tax lien here involved arose, Michigan purportedly had authorized the filing of such notices in the office of the county register of deeds. In the case of a lien upon real property, however, the notice was required to contain "a description of the land upon which a lien is claimed." The

standard form used by the United States for filing tax lien notices does not describe any of the property, real or personal, to which the lien attaches.[8] It was stipulated that, in accordance with the opinion of the Attorney General of Michigan, the register of deeds of the county in which the real property here involved is located would not have accepted for filing a federal notice of lien which did not describe the real property subject to the lien. (R. 10.)

We submit that the State of Michigan cannot require, as a condition to filing a federal tax lien, that the notice describe the real property subject to the lien; and that the State therefore has not "authorized the filing of such notice in an office within the State" under Section 3672 of the 1939 Code. The state authorization to which Section 3672 refers obviously means a valid authorization; and if the state refuses to accept a federal notice of lien for filing except upon conditions which it cannot lawfully impose, it is as though the state has not provided any office for filing. In such circumstances, the United States was authorized to file its tax lien with the clerk of the district court. Since the government filed its notice of lien in the district court four months before the mortgage was executed and recorded, the government's tax lien has priority over the mortgage lien under the settled principle that "the first in time is the first in right." *United States* v. *New Britain,* 347 U.S. 81, 85–87.

[8] It merely states that certain taxes have been assessed against the taxpayer, and that "the amount (or amounts) of said taxes," * * * is (or are) a lien (or liens) in favor of the United States upon all property and rights to property belonging to said taxpayer * * *" (see App. C. *infra*, pp. 28–29).

1. The federal lien for unpaid taxes is a broad lien that attaches to "all" property and rights to property of a delinquent taxpayer. It is not limited to property which the taxpayer has when the lien attaches; it also covers after-acquired property. *Glass City Bank* v. *United States*, 326 U.S. 265. Furthermore, "matters directly affecting the nature or operation of such liens are federal questions, regardless of whether the federal statutory scheme specifically deals with them or not" (*United States* v. *Brosnan*, 363 U.S. 237, 240; see *United States* v. *Security Tr. & Sav. Bk.*, 340 U.S. 47, 49). It is, therefore, a federal question whether Congress, in authorizing the filing of notices of federal tax liens in offices designated by state law for that purpose, also authorized the states to require, as a condition to such filing, that the notice describe the real property involved.

2. The legislative history of the Code provisions governing the filing of federal tax liens shows that Congress merely intended to permit the states to designate the *place*, but not the *requirements*, of filing.

In *United States* v. *Snyder*, 149 U.S. 210, this Court held that, under an earlier federal tax lien statute which did not provide for filing of notice (Section 3186 of the Revised Statutes, as amended, 20 Stat. 327), the federal tax lien was valid as against a bona fide purchaser for value of the encumbered property who had neither notice nor knowledge of such lien. In 1913, in order to alleviate the hardships that had resulted from the *Snyder* decision, Congress passed the first Act for the filing of federal tax liens (Act of March 4, 1913, c. 166, 37 Stat. 1016). Congress pro-

vided that the federal tax lien "shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the district court of the district within which the property subject to such lien is situated." It further provided that

> Whenever any State by appropriate legislation authorizes the filing of such notice in the office of the registrar or recorder of deeds of the counties of that State, or in the State of Louisiana in the parishes thereof, then such lien shall not be valid in that State as against any mortgagee, purchaser, or judgment creditor, until such notice shall be filed in the office of the registrar or recorder of deeds of the county or counties, or parish or parishes in the State of Louisiana, within which the property subject to the lien is situated.

The House Report, after referring to the *Snyder* case, stated (H. Rep. No. 1018, 62d Cong., 2d Sess., p. 2):

> * * * the lien is so comprehensive that it covers all the property and rights to property of the delinquent situated anywhere in the United States, and any person taking title to real estate is subjected to the impossible task of ascertaining whether any person, who has at any time owned the real estate in question, has been delinquent in the payment of the taxes referred to while the owner of the real estate in question. The business carried on under the internal-revenue law may be at a great distance from the property affected by this secret lien, but this will not relieve the property from the lien.

The statute was amended in 1928 to provide that the tax lien was not valid as against mortgagees, purchasers or judgment creditors until notice thereof was filed by the collector "in accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice," or "in the office of the clerk of the United States District Court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice" (Section 613, Revenue Act of 1928, c. 852, 45 Stat. 791). The Committee Reports* give no explanation for this change.

While these amended provisions were in effect, *United States* v. *Maniaci*, 36 F. Supp. 293 (W.D. Mich.), affirmed *per curiam*, 116 F. 2d 925 (C.A. 6), was decided. It involved the same Michigan filing statute as is involved in the instant case. The notice of the federal lien was filed both with the clerk of the district court and with the county register of deeds. The federal lien was held invalid as to a subsequent purchaser, because the notice of lien did not contain a description of the land as required by the Michigan statute. The court ruled that by providing for filing "in accordance with" the law of the State or Territory in which the property subject to the lien is situated, Congress did not merely authorize the states "to designate by law the *place* of filing notice of lien," but "required the Collector to file notices of lien in accordance

*H. Rep. No. 2, 70th Cong., 1st Sess., p. 35; S. Rep. No. 960, 70th Cong., 1st Sess., p. 43.

"with the laws of the respective states * * *" (36 F. Supp. at 296, emphasis in original).

Within two years after the court of appeals' affirmance in *Maniaci*, Congress again amended the lien filing statute (Section 505, Revenue Act of 1942, c. 619, 56 Stat. 957). The provision that, as against mortgagees, pledgees, etc.[7], the federal lien was not valid until filed "*in accordance with* the law of the State or Territory" was changed to provide that it was not valid until filed "In the office in which the filing of such notice *is authorized by* the law of the State or Territory" (emphasis added). The Committee reports show that Congress thereby intended to restrict the authority of the states to specifying the *place* of recording, and thus in effect to overturn the *Maniaci* case.[8]

Thus, the House Committee stated (H. Rep. No. 2333, 77th Cong., 2d Sess., p. 173, emphasis added):

> This section of the bill *clarifies* section 3672(a) of the code by providing expressly that the notice required to validate a lien for Federal tax against any mortgagee, pledgee, purchaser, or judgment creditor shall be sufficient if filed in the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, *without regard to*

[7] In 1939, Congress added "pledgees" to the category of interests protected by Section 3672 against unfiled federal tax liens. Section 401, Revenue Act of 1939, c. 247, 53 Stat. 862.

[8] See *United States* v. *Rasmuson*, 253 F. 2d 944, 947 (C.A. 8); *Union Planters National Bank* v. *Godwin*, 140 F. Supp. 528, 534, n. 7 (E.D. Ark.).

> *other general requirements with respect to recording prescribed by the law of such State or Territory.*

Similarly, the Senate Committee stated (S. Rep. No. 1631, 77th Cong., 2d Sess., p. 248, emphasis added):

> The Treasury Department has consistently taken the position that section 3672 of the Code and the corresponding provisions of prior law authorize the State or Territory *only to designate the local office* for the filing of the notice of the lien. *This section of the bill,* which clarifies section 3672(a), as amended, * * * *is merely declaratory of the existing procedure* and *in accordance with the long-continued practice of the Treasury Department, which has been questioned in the courts.*

In sum, the provision for filing in the office where filing "is authorized by" state law, permits the state "only to designate the local office for the filing," but does not authorize it to prescribe "other general requirements with respect to recording * * *." Any requirement that once may have existed for filing "in accordance with" state law was eliminated from the Code in 1942.*

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* The court below relied upon *Youngblood* v. *United States*, 141 F. 2d 912 (C.A. 6), which held that the district court had improperly issued a writ of mandamus directing a county register of deeds in Michigan to file a federal tax lien which did not describe the land of the delinquent taxpayer. The court of appeals followed its earlier decision in the *Maniaci* case (*supra*, p. 14), and ruled (p. 914) that the 1942 amendment "evidences no change of attitude on the part of Congress in its recognition of the right of a state to regulate the filing of federal tax lien notices." This ruling ignores the legislative history cited in the text, showing that Congress did not

Unlike the situation in *United States* v. *Brosnan*, 363 U.S. 237, there is here "a congressional direction" against the adoption of "local policy * * * as the governing federal law" (pp. 242, 240). For Congress has affirmatively stated that the states may specify only the place, but not the requirements, for filing federal tax liens. As the court stated in *United States* v. *Rasmuson*, 253 F. 2d 944, 946 (C.A. 8), in upholding the validity of a federal lien where state filing requirements had not been met, the legislative history of the federal filing provisions indicates that Congress, "in allowing a State, as a matter of local benefit or convenience, to make a designation of a particular office for the filing of such notice," did not thereby intend "to permit each State also to make prescriptions as to the form and content of the notice which the Government was filing."

The conclusion that a state cannot prescribe the contents of a federal notice of lien is further supported by Section 6323(b) of the 1954 Code, which provides:

> *Form of Notice.*—If the notice [of lien] filed pursuant to subsection (a)(1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to subsection (a)(2), such notice shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien.

The House Committee Report stated that the "Treasury Department has consistently taken the position

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intend to authorize the states to impose their own filing requirements on federal tax lien notices. Contra: *United States* v. *Rasmuson*, 253 F. 2d 944 (C.A. 8), discussed in the text, *supra*.

that section 3672 of the 1939 Code and the corresponding provisions of prior law authorize the State or Territory only to designate the local office for the filing of the notice of the lien," and that the new provision was merely "declaratory of the existing procedure and in accordance with the long-continued practice of the Treasury Department." H. Rep. No. 1337, 83d Cong., 2d Sess., pp. A406–A407; see S. Rep. No. 1622, 83d Cong., 2d Sess., pp. 575–576. Indeed, the House Committee dealt specifically with the problem involved in this case. It stated (pp. A406–A407, emphasis added):

> Subsection (b) is designed to eliminate any question as to the validity of the lien as against mortgagees, pledgees, purchasers, and judgment creditors, where notice thereof is filed in the office designated by the law of the appropriate State or Territory, even though the notice does not comply with other requirements of the law of the State or Territory as to the form or content of the notice. For example, *the omission from the notice of lien of a description of the property subject to the lien would not affect the validity thereof, even though the law of the State or Territory requires that the notice of lien contain a description of the property subject to the lien.* * * *

3. The ruling below that the state can require the United States to describe, in its notice of lien, the real property subject to the lien, would impose on the United States an unwarranted burden that would seriously reduce the efficacy of the federal tax lien as a means of collecting taxes. For the government's tax assessors would be required, for all the hundreds of thousands of tax liens filed each year, to make

checks of real property records in every county where taxpayers conceivably might own real estate in an effort to ascertain their holdings. Moreover, since federal liens cover after-acquired property, the tax assessors, in order to protect the government fully, would be required constantly to recheck the real property records to discover whether taxpayers had subsequently acquired any realty. There should not be ascribed to Congress the intention to create such a burdensome and unwieldy system of tax collection unless such a purpose clearly appears either in the statute or in its legislative history. The Code does not impose or even suggest such a requirement; on the contrary, it gives the federal government a broad general lien upon "all property and rights to property" of delinquent taxpayers. And, as we have shown, the legislative history affirmatively establishes that Congress merely intended to authorize the states to designate the place of filing, but not to impose their own substantive filing requirements.

4. Permitting a state to apply its own filing requirements to federal tax liens would also defeat the "cardinal principle of Congress in its tax scheme" of achieving "uniformity, as far as may be" (*United States* v. *Gilbert Associates,* 345 U.S. 361, 364). Tax liens "form part of the machinery for the collection of federal taxes" to which the objective of uniformity applies (*United States* v. *Brosnan,* 363 U.S. 237, 241). The primary purpose of the federal filing statutes has been to afford notice of existing federal tax liens for the protection of would-be mortgagees, pledgees, purchasers, or judgment creditors acquiring an interest in property of the delinquent taxpayer. Con-

gress has never indicated any disposition to subject the federal tax lien to the vicissitudes of varying state statutes other than those providing a *place* for the filing of notice of the federal lien. See *supra*, pp. 12–18. Indeed, this Court long ago indicated that the federal tax system is not subject to the recording laws of the States. *United States* v. *Snyder*, 149 U.S. 210. Under the rule announced by the court below, however, the extent and validity of federal tax liens would vary from state to state depending upon the particular filing requirements of the different states.[10]

In the *Brosnan* case, *supra*, this Court stated (363 U.S. at 242) that the "need for uniformity in this instance [extinguishment of federal liens] is outweighed by the severe dislocation to local property relationships which would result from our disregarding state procedures." There would be no similar dislocation, however, if the states were denied the power to prescribe the contents of federal lien notices.[11] Since the federal tax lien attaches to all of a taxpayer's property, a notice of lien that identifies the taxpayer is notice that all of his property is encumbered. The respondent itself states (Br. in Opp., p. 7) that in Michigan "many individuals purchasing real estate or interests therein, as well as title and mortgage companies have, * * * relied upon the rec-

[10] The ruling below would pose a particularly serious problem in the twelve states which follow the Torrens system of land title registration. See 6 Powell, *Law of Real Property*, Sec. 921. In our petition, we erroneously stated that Michigan also follows the Torrens system.

[11] Indeed, the state of Michigan has impliedly so recognized by its action in 1956 in adopting the Uniform Federal Tax Lien Registration Act (see note 1, *supra*, p. 2), under which the standard form of notice is acceptable.

ords of the Register of Deeds rather than make additional searches in other offices where a notice of lien might be filed." If the state accepts the federal notice of lien form, it becomes available in the register of deeds office to indicate which taxpayers' property is subject to such liens. If, on the other hand, the state continues to reject the federal form, the only other office where a federal notice of lien may be filed is the clerk's office in the district court. It could hardly cause any "severe dislocation to local property relationships" (*Brosnan, supra*) if the records of that office had also to be checked.

Furthermore, reversal of the decision below would not lead to any interference by the federal government with the state's settled lien filing practices. For the Michigan statute here involved applies only to federal tax liens; and the state is, of course, free to follow whatever procedures it deems appropriate in dealing with the filing of locally-created liens.

CONCLUSION

The decision of the Supreme Court of Michigan should be reversed and the case remanded with directions to give the federal tax lien priority over the respondent's mortgage lien.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

LOUIS F. OBERDORFER,
Assistant Attorney General.

I. HENRY KUTZ,
FRED E. YOUNGMAN,
Attorneys.

SEPTEMBER 1961.

APPENDIX A

Internal Revenue Code of 1939:

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(26 U.S.C. 1952 ed., Sec. 3670.)

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(26 U.S.C. 1952 ed., Sec. 3671.)

SEC. 3672 [as amended by Sec. 401 of the Revenue Act of 1939, c. 247, 53 Stat. 862, and Sec. 505 of the Revenue Act of 1942, c. 619, 56 Stat. 798]. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien without Notice.*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under state or territorial laws.*—In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situ-

ated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With clerk of district court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

* * * * *

(26 U.S.C. 1952 ed., Sec. 3672.)

6 Michigan Statutes Annotated (1936 ed.):

CHAP. 68. MISCELLANEOUS PROVISIONS

* * * * *

FILING OF FEDERAL TAX LIENS

Act 104, 1923, p. 142; eff. Aug. 30

An Act to provide for and to authorize the filing of notices of federal tax liens by the United States of America in the office of the register of deeds in the various counties of this state, pursuant to section three thousand one hundred eighty-six [3186] of the revised statutes of the United States

The People of the State of Michigan Enact:

SEC. 7.751. *U.S. Tax Liens; Filing of Notice, Contents; Register of Deeds, Duty.* Section 1. That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the State of Michigan pursuant to section three thousand one hundred eighty-six [3186] of the revised statutes of the United States, he is

hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty [50] cents for such notice, file and index the same in a separate book, entitled "Record of the United States Tax Liens," indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred eighty-six [3186] of the revised statutes of the United States. (C.L. '48, § 3746.)

APPENDIX B

Internal Revenue Code of 1954:

SEC. 6323. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien Without Notice.*—Except as otherwise provided in subsection (c), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate—

(1) *Under state or territorial laws.*—In the office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

(2) *With Clerk of district court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

(3) *With clerk of district court for District of Columbia.*—In the office of the clerk of the United States District Court for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) *Form of Notice.*—If the notice filed pursuant to subsection (a)(1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to subsection (a)(2), such notice shall be valid notwithstanding any law of the State or Territory

regarding the form of content of a notice of lien.

* * * * *

(26 U.S.C. 1958 ed., Sec. 6323.)

Treasury Regulations on Procedure and Administration (1954 Code):

Sec. 301.6323–1. *Validity of lien against mortgagees, pledgees, purchasers, and judgment creditors.*—(a) *Invalidity of lien without notice*—* * *

* * * * *

(3) *Form of notice.*—The form to be used for filing the notice of lien shall be Form 668, "Notice of Federal Tax Lien under Internal Revenue Laws". Such notice, filed in the office designated by the law of a State or Territory, shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien. For example, the omission from the notice of lien of a description of the property subject to the lien will not affect the validity thereof, even though the law of the State or Territory requires that the notice of lien contain a description of the property subject to the lien.

* * * * *

APPENDIX C

Opinion of the Attorney General of Michigan, No. 1709, dated September 10, 1953 (Biennial Report, pp. 216–217, of the Attorney General of Michigan (1952–1954)):

FEDERAL TAX LIEN NOTICE—REGISTER OF DEEDS—Federal tax lien notice claiming lien on all property of taxpayer not entitled to recordation where it does not describe land on which lien is sought.

SEPTEMBER 10, 1953.

No. 1709

MR. JOSEPH E. KILLIAN,
Prosecuting Attorney, Berrien County,
Commercial Bank Building,
St. Joseph, Michigan

DEAR SIR: You have presented for my opinion the following question:

"Is a notice of federal tax lien, issued pursuant to 26 U.S.C.A. section 3672, entitled to recordation in the office of a county register of deeds where it omits to describe the land of the taxpayer against whom the lien is sought?"

The federal law (26 U.S.C.A., § 3672) requires that notices of tax liens be recorded in accordance with the laws of the particular state where provision has been made for the filing of such liens.

Pursuant to federal law, Michigan provided for the filing of such liens by Act No. 104 of the Public Acts of 1923 (C.L. 1948, § 211.521 [Stat. Ann § 7.751]).

This act provides as follows:

"That whenever the collector of internal revenue for any district in the United States, or

any tax collecting officers of the United States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the state of Michigan pursuant to section three thousand one hundred eighty-six (3186) of the revised statutes of the United States, he is hereby authorised to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty (50) cents for such notice, file and index the same in a separate book, entitled 'Record of United States Tax Liens,' indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred eighty-six (3186) of the revised statutes of the United States."

This section has been considered in various federal court cases, including *Youngblood* v. *United States*, 141 F (2) 912, and has been declared to be reasonable and that federal tax notices must comply with its terms in order to be recorded. The act requires that any land against which a lien is sought shall be described but does not require any description in the case of personal property.

You have supplied me with a copy of Treasury Department Form No. 668, which you advise is the form used to file for liens. This form recites in part as follows:

"Pursuant to the provisions of Sections 3670, 3671, and 3672 of the Internal Revenue Code of the United States, notice is hereby given that

there has been assessed * * * against the following-named taxpayer, taxes (including interest and penalties) * * * and that by virtue of the above-mentioned statutes the amount (or amounts) of said taxes, * * * is (or are) a lien (or liens) in favor of the United States upon all property and rights to property belonging to said taxpayer, * * *."

Since the form of notice used claims a lien on all property of the taxpayer and does not contain a description of any land, the notice is not entitled to recordation since it fails to comply with the provisions of Act 104 of the Public Acts of 1923, as set forth above.

Yours very truly,

FRANK G. MILLARD,
Attorney General.

WBE:ms

U.S. GOVERNMENT PRINTING OFFICE: 1981

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 52

UNITED STATES OF AMERICA,
Petitioner,
vs.
THE UNION CENTRAL LIFE INSURANCE COMPANY,
Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF MICHIGAN

BRIEF FOR THE UNION CENTRAL LIFE INSURANCE COMPANY

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OPINION BELOW

The opinion of the Supreme Court of the State of Michigan is reported at 361 Mich. 283, 105 N.W. 2d 196.

JURISDICTION

The jurisdictional requisites are adequately set forth in the brief for the United States.

QUESTION PRESENTED

Whether a state can protect local real property interests by requiring, as a condition to the filing of a notice of federal tax lien, that the notice of said lien contain a legal description of the real estate sought to be made subject thereto.

STATUTES INVOLVED

Sections 3670, 3671 and 3672(a) (1) and (2) of the Internal Revenue Code of 1939 and 6 Mich. Stat Ann., Sec. 7.751, are set forth in Appendix A, and Sec. 6323 of the Internal Revenue Code of 1954 is set forth in Appendix B.

STATEMENT

The facts are stipulated and are adequately set forth in the brief of United States, on pages 2 to 5, inclusive.

SUMMARY OF ARGUMENT

It is submitted that the decision of the Supreme Court of Michigan should be affirmed for the following reasons:

1. The cases of *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6), *United States v. Maniaci,* 36 F. Supp. 293 (W.D. Mich.) approved *per curiam,* 116 F. 2d 935 (C.A. 6), *Hicks v. Carpenter,* (Cir. Ct. Wayne Co.) 50-1 U.S.T.C., par. 9150, and *United States v. City of Detroit,* 138 F. 2d 418 (C.A. 6), demonstrate that it was the law of the Sixth Circuit at the time of the recording of the mortgage from Robert G. Peters, Jr. and Helen R. Peters, his wife, to Respondent, that a notice of federal tax lien was not valid as against a subsequent mortgagee, pledgee, purchaser, or judgment creditor unless such notice contained a description of the premises intended to be subjected thereto. *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6), decided by the Circuit Court of Appeals, is a direct and unqualified holding to this effect and has never been overruled in the jurisdiction where the cause of action arose, or even challenged by the courts of that jurisdiction. The Solicitor General has been unable to cite any contrary authority, and has been forced to rely upon Congressional Reports and views of and positions taken by the United States Treasury Department in an attempt to controvert the established law of the jurisdiction.

2. The law of the Sixth Circuit should be followed rather than the law of the Eighth Circuit as exemplified by the decision of *United States v. Rasmuson,* 253 F. 2d 944 (C.A. 8), because the decision in *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6) is much more in harmony with the policy of the United States Supreme Court as enunciated in the case of *United States v. Brosnan,* 363

U.S. 237, than is the decision in *United States v. Rasmuson*, 253 F. 2d 944 (C.A. 8). Moreover, as demonstrated in paragraph III, *infra*, the dislocation to local property relationships under the 1942 amendment would have been much more severe than those referred to in *United States v. Brosnan* 363 U.S. 237, had *Youngblood v. United States*, 141 F. 2d 912 (C.A. 6), been decided in favor of the Government.

3. In *Youngblood v. United States, supra*, the Court stated categorically, in clear and unmistable language, that the 1942 amendment to the Federal statute deleting the phrase "*in accordance with the law of the State or Territory in which the property subject to the lien is situated*" and substituting the phrase "*in the office in which the filing of the notice is authorized by the State or Territory*" did not affect the right of a State or Territory to impose reasonable conditions as to recording. It was also held that the recording requirement of the Michigan statute was reasonable. As above stated, *Youngblood v. United States*, 141 F. 2d 912 (C.A. 6), has never been overruled and has continued to be the law of the jurisdiction.

4. The question of priority in Michigan arises only in those cases where the notice of tax lien was filed prior to January 1, 1955 against a taxpayer whose land was subsequently encumbered by a mortgage or other lien, or where he has subsequently sold and conveyed his land, or some interest therein, to another person or persons.

All cases where questions of priority can exist are now barred by the statute of limitations and can arise only where the running of the statute has been suspended. While figures are not, and in the nature of things cannot be available, it seems evident that those cases where a contest

would now be possible must be negligible. In any event the entire question will very soon become completely academic.

ARGUMENT

I.

THE NOTICE OF FEDERAL TAX LIEN AGAINST THE MORTGAGORS, WHICH WAS OFFERED FOR FILING IN THE OFFICE OF THE REGISTER OF DEEDS FOR OAKLAND COUNTY, MICHIGAN WITHOUT LEGAL DESCRIPTION DOES NOT TAKE PRIORITY OVER RESPONDENT'S MORTGAGE.

Respondent submits that the law in this case is clear and leads to but one conclusion, namely, that the federal tax lien filed by the United States does not have priority over respondent's mortgage. The Michigan statute was express and permitted the Director of Internal Revenue to file a notice of federal tax lien with the Register of Deeds for the county in which the land against which the lien was to be asserted is located. This statute (Act 104, P.A. 1923) 6 M.S.A. (1936 Ed.) §7.751 remained in effect during the entire period of the transactions, involved in this case. It read as follows:

> "§7.751) U. S. tax liens; filing of notice, contents; register of deeds, duty. Section 1. That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the state of Michigan pursuant to section three thousand one hundred

eighty-six (3186) of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment *and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated;* and such register of deeds shall, upon receiving a filing fee of fifty (50) cents for such notice, file and index the same in a separate book, entitled 'Record of United States Tax Liens', indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred eighty-six (3186) of the revised statutes of the United States. (C.L. '48, §211.521; C.L. '29 §3746)." (Emphasis supplied.)

Since the lien involved in this case did not conform to the italicized requirements of the statute and was never accepted for record by the register of deeds of Oakland County there was no notice given to the respondent of the pre-existing federal tax lien at the time the mortgage was recorded. As indicated in the Statement of Facts contained in the brief of the United States, the Circuit Court for the County of Oakland determined that the mortgage was superior to the improperly filed lien of the Federal Government and entered a decree enforcing the lien of the mortgage.

Moreover, there is nothing in this statute which in any way prohibited the recording of the notice of lien. It merely required that this notice of lien, like any claim against real property in the State of Michigan, contain a legal description of the real estate. This would enable one making a search of the title to ascertain the existence of the United

States tax lien far more readily, and without the difficulty and confusion otherwise involved, thus eliminating the risk of failure of discovery. The Government in this instance simply did not see fit to abide by the requirements of the statute.

The Attorney General of the State of Michigan, by opinion dated September 10, 1953, (Opinion No. 1709) declared that a federal tax lien must contain a description of the land if it is to be recorded. As a result, it is not necessary to go beyond the law of Michigan to determine the issues in this case. Since the federal tax lien was not recorded, and since it is undisputed that the respondent had no actual knowledge of it, the lien cannot supersede the mortgage of respondent.

However, there is even stronger authority which controls this case and supports the decree of the Michigan Supreme Court. The Circuit Court of Appeals for the Sixth Circuit in *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6) ruled on the very question presented here, and found that this lien was not recordable, and therefore could not take priority over or supersede the claim of the mortgagee. This case was decided at the time when the same provisions of the Internal Revenue Code were in effect as when the mortgage was given to the respondent and recorded, and when the Michigan statute above quoted was also in force.

In the *Youngblood* case, *supra,* an action of mandamus was brought against Youngblood, Register of Deeds for Wayne County, to compel him to accept for recordation a notice of tax lien similar to the one in this case, which contained no legal description of the land involved. The court expressly held that the Department of Internal Revenue had no right to override the recording laws, and ruled

hat unless the lien for federal taxes contained a compre-
ensive description of the land, it would not be acceptable
or recording. The court said significantly enough, at pag
14:

"The federal statute before us for interpretation prescribes that the collector of internal revenue shall file the lien notice in an office designated by state law. The Michigan legislature has denominated that office as the office of the register of deeds; but has conditioned acceptance for filing there upon the inclusion of a description of the land in the notice of lien for federal taxes.

• • • • •

"A state's right to safeguard muniments of title to land within its borders should not be lightly denied upon a strained assumption that Congress meant to impeach that right. *The amendment contained in the Revenue Act of 1942 evidences no change of attitude on the part of Congress* in its recognition of the right of a state to regulate the filing of federal tax lien notices. Under the existing enactment the notice must be filed in an office authorized by the state; or, if no such office has been designated, then in the office of the United States District Court Clerk. Michigan has designated an office, that of the register of deeds; but has not authorized the filing of the notice in the form presented by the collector. In the lien notice under present consideration, an essential ingredient to conform to the state law is missing. The land is not described. Mere inconvenience to federal tax officials in procuring and filing descriptions of land owned by delinquent taxpayers supplies no sound basis for the issuance of peremptory writ of mandamus by a federal court, directing a state ministerial officer to violate his obvious duty of compliance with the state law under which he acts." (Emphasis supplied.)

This decision was never appealed, nor has it been overruled. Subsequently *Hicks v. Carpenter*, (Cir. Ct. Wayne Co.) 50-1 U.S.T.C. par. 9150 was decided, and the same conclusion was reached. No appeal was ever taken from that decision, and it constituted a further declaration of the law in 1954 when the present mortgage was given to the respondent. *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6) continues to be controlling and the law of this jurisdiction. Moreover, we respectfully suggest that the Michigan statute and Attorney General's decision have been consistently followed by the register of deeds for Oakland County. *Youngblood* has virtually become a rule of property. To upset it could very well cause serious repercussions and affect the stability of title throughout this jurisdiction.

Youngblood v. United States, 141 F. 2d 912 (C.A. 6) has stood unchallenged and even uncriticized by the courts of the Sixth Circuit up to the change in the Federal act made in 1954. During this period countless title examiners, abstract companies, title insurance companies and loaning agencies have relied on the law of the state and circuit with reference to real estates transactions. In fact few, if any, abstracts contain a search for notices of federal tax lien made in the office of the District Clerk of the Federal court up to the time of the filing of the notice of the tax lien in question. Title examiners naturally relied on an abstract as a complete history of title, and under modern conditions pressure is too great to expect them to make additional searches in other offices which are unnecessary according to the established law of the jurisdiction.

II.

THE 1942 AMENDMENT TO SECTION 3672(a) DID NOT EFFECT A CHANGE IN THE RIGHT OF A STATE OR TERRITORY TO REQUIRE THAT A NOTICE OF FEDERAL TAX LIEN CONTAIN A DESCRIPTION OF THE LAND IN QUESTION AS A PREREQUISITE FOR RECORDING.

At the time of the filing of the U. S. tax lien in question, the 1942 amendment to the pertinent portion of Section 3672(a) of the Internal Revenue Code was in effect. Nevertheless the cases of *United States v. Maniaci*, 36 F. Supp. 293 (W.D. Mich.) affirmed *per curiam*, 116 F. 2d 935 (C.A. 6), and *United States v. City of Detroit*, 138 F. 2d 418 (C.A. 6), are also important and have considerable bearing on the question at issue, even though decided with reference to the Federal statute as it existed prior to the *1942* amendment. Prior to the 1942 amendment, the pertinent portion of Section 3672(a) of the Internal Revenue Code read as follows:

> "(a) *Invalidity of Lien Without Notice.*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the creditor—
>
> "(1) *Under State or Territorial Laws.—In accordance with the law of the State or Territory in which the property subject to the lien is situated,* whenever the State or Territory has by law provided for the filing of such notice; or
>
> "(2) *With Clerk of District Court.*—In the office of the Clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notices; or * * *."

The case of *United States v. Maniaci,* 36 F. Supp. 293 (W.D. Mich.) affirmed *per curiam,* 116 F. 2d 935 (C.A. 6), was decided when the above quoted language *"in accordance with the law of the State or Territory in which the property subject to the lien is situated"* was in effect. The court ruled that this provision in the code meant exactly what it said and any tax lien which did not contain a description of the land in question, as required by the Michigan Act, was not entitled to record in the office of the Register of Deeds. In view of the unmistakably clear language of the Federal Statute, it is difficult to see how the court could have decided otherwise. In the case of *United States v. City of Detroit,* 138 F. 2d 418 (C.A. 6), the decision of *United States v. Maniaci,* 36 F. Supp. 293 (W.D. Mich.) affirmed *per curiam* 116 F. 2d 935 (C.A. 6), was followed.

Under the 1942 amendment to Sec. 3672(a) the phrase *"in accordance with the law of the State or Territory"* was deleted and the clause *"in the office in which the filing of the notice is authorized by the State or Territory"* was substituted. Nevertheless, in *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6) where the cause of action arose after the amendment, the Circuit Court of Appeals for the Sixth Circuit held that this change in the wording of the statute did not alter the legal situation as to the recording of the notice of lien, and that Congress did not intend by this language to impeach a State's right to protect its citizens by imposing reasonable requirements with respect to recordation. We quote again from *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6), at page 914:

> "A State's right to safeguard muniments of title to land within its border should not be lightly denied upon a strained assumption that Congress meant to impeach that right. *The amendment contained in the Revenue Act of 1942 evidences no*

change of attitude on the part of Congress in its recognition of the right of a State to regulate the filing of Federal tax lien notices." (Emphasis supplied.)

Indeed, if it had been the intention of Congress to effect such a radical change in the law which had become a rule of property in this State, it would have spelled such intention out in clear and unmistakable language in the 1942 amendment instead of using the clause in question. It would have been an extremely simple matter to do so had this been the intent. Furthermore, it can scarcely be contended that a court decision construing a Federal Statute, and particularly a decision of the Circuit Court of Appeals, is less to be relied upon than a mere Congressional Committee Report, the substance of which was never incorporated into the wording of the statute. Is it the duty of a prospective mortgagee or his adviser to place reliance on the report of a Congressional Committee rather than to base his conduct on decisions of the Circuit Court of Appeals construing the language of that statute and on the established law of the Circuit?

Thus *United States v. Maniaci,* 36 F. Supp. 293 (W.D. Mich.) affirmed *per curiam,* 116 F. 2d 935 (C.A. 6), and *United States v. The City of Detroit,* 138 F. 2d 418 (C.A. 6), also clearly demonstrate the attitude and policy of the Federal courts, of the Sixth Circuit in upholding the Michigan enabling statute (Act 104 of the Public Acts of 1923, as amended) with respect to its requirement that notices of federal tax liens contain a description of the land claimed to be subject to the lien. All Federal cases in this Circuit involving the question under discussion look with decided favor on the attitude of the Michigan Legislature and its desire to protect the real estate titles of the citizens

of this State. Moreover, the Attorney General in his opinion of September 1953 confirmed the logic of *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6). Interestingly enough, the United States is unable to cite any law from the Sixth Circuit or this state court contrary to *Youngblood v. United States, supra.*

It is argued at some length in behalf of the United States, pages 12-16 United States Brief, that Congress never intended at any time, even prior to the 1942 amendment, to permit the States of Territories to designate the manner, but only the place, of recording notices of federal tax liens. If that were the case, it seems strange indeed that Congress selected the statutory phrase "in accordance with the *laws* of the State or Territory in which the property subject to the lien is located" merely to direct the authorization of a *place* for filing of the notice of tax lien. Not only do the cases of *United States v. Maniaci,* 36 F. Supp. 293 (W.D. Mich) affirmed *per curiam,* 116 F. 2d 935 (C.A. 6), and *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6), completely refute this argument but it is asking too much for one to believe that Congress would have employed such a totally inept and misleading phrase for this purpose.

III.

THE DECISION BELOW REFLECTS THE POLICY OF THE UNITED STATES SUPREME COURT.

The policy of the Supreme Court of the United States with respect to federal tax liens is well stated in the case of *United States v. Brosnan,* 363 U.S. 237, 241 from which we quote as follows:

> "We nevertheless believe it desirable to adopt as federal law state law governing divestiture of fed-

eral tax liens, except to the extent that Congress may have entered the field. It is true that such liens form part of the machinery for the collection of federal taxes, the objective of which is 'uniformity, as far as may be'. *United States v. Gilbert Associates*, 345 U. S. 361, 364, 73 S. Ct. 701, 703, 97 L. Ed. 1071. However, when Congress resorted to the use of liens, it came into an area of complex property relationships long since settled and regulated by state law. We believe that, so far as this Court is concerned, the need for uniformity in this instance is outweighed by the severe dislocation to local property relationships which would result from our disregarding state procedures. Long accepted nonjudicial means of enforcing private liens would be embarrassed, if not nullified where federal liens are involved, and many titles already secured by such means would be cast in doubt. We think it more harmonious with the tenets of our federal system and more consistent with what Congress has already done in this area, not to inject ourselves into the network of competing private property interests, by displacing well-established state procedures governing their enforcement or superimposing on them a new federal rule. Cf. *Board of Com'rs of Jackson County v. United States*, 308 U. S. 343, 60 S. Ct. 285, 84 L. Ed. 313."

It has been a long-established policy of the Legislature and Courts of the State of Michigan to give full recognition and protection to the recording laws of the State, to the end that they may be relied upon insofar as is practicable to furnish evidence of the ownership and validity of interests in real estate. The Michigan legislature, for example, has always required that notices of levy on execution and attachments contain a legal description of the land intended to be subjected thereto. Judgments alone in Michigan do not constitute a lien on real estate. This purpose

would have been seriously impaired by the indiscriminate filing of instruments containing no legal description of the land affected thereby, particularly where the then existing statutes and court decisions indicated that a description was necessary. Prior to the 1942 amendment the federal statute pertaining to the recording of notices of federal tax liens gave recognition to this policy and similar long-established policies of other States by providing for the filing of such notices *in accordance with the law of the State or Territory in which the property subject to the lien is situated.* The case of *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6) held that by the 1942 amendment Congress did not intend to effect any fundamental change in the law, and did not intend thereby to impeach a State's rights to protect its citizens by imposing reasonable requirements with respect to recordation. It is our contention therefore that the *Youngblood* decision is much more in harmony with the language above quoted from *United States v. Brosnan,* 363 U.S. 237, than is the holding in the case of *United States v. Rasmuson,* 253 F. 2d 944 (C.A. 8), which was decided in another Circuit and pertained to a jurisdiction where the Torrens system of land titles was in effect. The decision in *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6), has become a rule of property in the State of Michigan and many individuals purchasing real estate or interests therein, as well as title and mortgage companies have, as a consequence, relied upon the records of the Register of Deeds rather than make additional searches in other offices where a notice of lien might be filed. In modern times the pressure of business is too great for one to do those things which the law tells them is unnecessary.

It is argued rather assiduously in paragraph 4 on page 19 of the brief for the United States that to permit a State

to apply its own filing requirements to federal tax liens would defeat the "cardinal principle of Congress in its tax scheme" of achieving "uniformity" as far as may be. It was admitted, however, that in the case of *United States v. Brosnan*, 363 U. S. 237, the court held that "the need for uniformity was outweighed by the severe dislocation to local property relationships which would result from our disregarding *State procedures.*" (Emphasis added.) The Solicitor General goes on to state in the brief that there would be no such dislocation if the States and Territories were denied the power to require that notices of federal tax liens contain a description of the real estate sought to be subjected thereto. We most emphaticallly disagree. Since the repeal, during the year 1956, of the Michigan statute providing for the manner of recording notices of federal tax liens, notices of such liens have altogether too frequently been filed against a real property owner having an identical name with one or more other real property owners in the same jurisdiction, thus clouding the titles of all other owners who have identical names, regardless of whether a claim for tax delinquency was asserted against them. This happens much more often that might be supposed. Moreover, in many cases the Internal Revenue Department has greatly aggravated the difficulty by the use in the notice of only the initials of the alleged delinquent taxpayer, as, for example, where a notice of lien is filed against "J. Smith." The utter confusion which inevitably results is too obvious to require further explanation. Not only are all owners having similar names injured by the clouding of their titles, but all persons engaged in transactions involving any real estate to which the lien could conceivably attach are subjected to great inconvenience and confusion. This is precisely the mischief which the

Michigan recording statute was designed to prevent. We submit that a far greater dislocation to local property relationship has been caused in this manner than was caused prior to the *Brosnan* decision by the federal law requiring a procedural change in the method of foreclosing a mortgage. (See *United States v. Brosnan*, 363 U.S. 237.)

In accordance with the policy of the United States Supreme Court as outlined in the *United States v. Brosnan*, 363 U.S. 237, we submit that the decision in *Youngblood v. United States*, 141 F. 2d (C.A. 6), should not be overruled.

IV.

THE REQUIREMENTS OF THE MICHIGAN RECORDING STATUTE DID NOT IMPOSE AN UNDUE BURDEN ON THE GOVERNMENT.

It is claimed in the brief of the United States (pages 18 and 19) that the ruling of the Michigan Supreme Court that the State can require the Government to describe in its notice of lien the real estate subject to the lien, would impose on the Government an unwarranted burden that would seriously reduce the efficacy of the federal tax lien as a means of collecting taxes. We believe that this statement is grossly exaggerated, for the following reasons:

After the effective date of the 1954 amendment to the federal statute concerning notices of tax liens, States and Territories could no longer prescribe the form and content of a notice of federal tax lien but merely designate an office for filing. Subsequently the Michigan statute requiring the insertion of a description of the land in question in all notices of federal tax liens, as a prerequisite for recording in the office of the Register of Deeds, was repealed,

although the repeal did not take place until 1956 (Act 107 Public Acts of 1956, 6 Mich. Stat. Ann., Sec. 7.751, 7.752, 7.753). In the vast majority of cases where notices of federal tax liens have been filed against mortgaged property where foreclosures or other priority contests have arisen the notices have ben filed since the effective date of the 1954 amendment. Of the thousands of notices of federal tax liens which the Government states were filed annually in Michigan, a considerable percentage must have been filed against persons who had no real estate. Secondly, even where the taxpayer owned real estate, a further percentage was doubtless filed against persons who had neither created subsequent interests in their land nor been subjected to further encumbrances thereon, so that no question of priority could have arisen. Thirdly, in those cases where mortgages on real estate do exist, the records show repeated instances where notices of federal tax liens were filed after the recording of the mortgages so that the tax lien would in any event be subordinate, regardless of the place of filing, or whether they contained a description or not. In other words, the Government's ground for concern would be limited to those cases where both (1) the notice of tax lien was filed prior to the effective date of the 1954 amendment, and (2) the taxpayer had real estate encumbered by a mortgage or had conveyed by an instrument, which in either case was recorded after the filing of the federal tax lien. We venture to state that the number of cases where he above set of facts concurrently exist constitutes but a very small fraction of the number of annual liens mentioned in the Government's brief. The brief does not disclose any cases presently pending in which the question is in controversy. Furthermore, as time goes on, the number of cases involving the situation complained of must necessarily diminish so that in a comparatively short period of time

the question will become entirely academic. We submit that even at the present time this number is so small that the effect of the ruling of the Michigan Supreme Court below on the revenue collecting agencies of the Government if affirmed would be of exceedingly slight consequence.

Lastly, and most important of all, the enforcement of United States tax liens is barred by the statute of limitations after the expiration of a period of six years from the date of assessment. Hence the six-year limitation period would normally have expired January 1, 1961, at the latest, as to all liens, notice of which was filed prior to the effective date of the 1954 amendment. As previously stated, no question can be raised as to the priority of those notices of lien filed after January 1, 1955, the effective date of the amendment, because of failure to include a legal desciption of the land in question.

It is true that the running of the statute of limitations is suspended in certain instances, but questions can now arise only in those cases where the statute has been tolled, and then only where the special set of circumstances described in the preceding paragraphs exist. Therefore, the number of liens filed prior to January 1, 1955, where the possibility of contest exists because of a lack of legal description, must necesarily be further reduced to a point which is absurdly low and in all probability negligible. Even this small number is continually decreasing with the passage of time. Consequently it seems clear that if the ruling of the Michigan Supreme Court is sustained the adverse effect on the tax collecting agencies of the Government would be negligible.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the Supreme Court of the State of Michigan should be affirmed.

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APPENDIX A

Internal Revenue Code of 1939:

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all *property and* rights to property, whether real or personal, belonging to such person.

(26 U.S.C. 1952 ed., Sec. 3670.)

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.
(26 U.S.C. 1952 ed., Sec. 3671.)

SEC. 3672 [as amended by Sec. 401 of the Revenue Act of 1939, c. 247, 53 Stat. 862, and Sec. 505 of the Revenue Act of 1942, c. 619, 56 Stat. 798]. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a.) *Invalidity of Lien without Notice.*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under state or territorial laws.*—In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With clerk of district court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

* * * * *

(26 U.S.C. 1952 ed., Sec. 3672.)

6 Michigan Statutes Annotated (1936 ed.):

CHAP. 63. MISCELLANEOUS PROVISIONS

* * * * *

FILING OF FEDERAL TAX LIENS

Act 104, 1923, p. 142; eff. Aug. 30

An Act to provide for and to authorize the filing of notices of federal tax liens by the United States of America in the office of the register of deeds in the various counties, of this state, pursuant to section three thousand one hundred eighty-six [3186] of the revised statutes of the United States

The People of the State of Michigan Enact:

SEC. 7.751. *U.S. Tax Liens; Filing of Notice, Contents; Register of Deeds, Duty.* Section 1. That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the State of Michigan pursuant to section three thousand one hundred eighty-six [3186] of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such tax-

payer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty [50] cents for such notice, file and index the same in a separate book, entitled "Record of the United States Tax Liens," indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred eighty-six [3186] of the revised statutes of the United States. (C. L. '48, §3746.)

APPENDIX B

Internal Revenue Code of 1954:

SEC. 6323. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien Without Notice.*—Except as otherwise provided in subsection (c), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate—

(1) *Under state or territorial laws.*—In the office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

(2) *With Clerk of district court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

(3) *With clerk of district court for District of Columbia.*—In the office of the clerk of the United States District Court for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) *Form of Notice*—If the notice filed pursuant to subsection (a)(1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to subsection (a)(2), such notice shall be valid notwithstanding any law of the State or Territory regarding the form of content of a notice of lien.

* * * * *

(26 U.S.C. 1958 ed., Sec. 6323.)